

Halsbury's Laws of England/CROWN PROCEEDINGS AND CROWN PRACTICE (VOLUME 12(1) (REISSUE))/1. INTRODUCTION/101. Position at common law.

## **CROWN PROCEEDINGS AND CROWN PRACTICE (**

### **1. INTRODUCTION**

#### **101. Position at common law.**

Under the general rule at common law no proceeding, civil or criminal, was maintainable against the monarch in person<sup>1</sup>, for, it was said, the courts, being the King's own, could have no jurisdiction over him<sup>2</sup>. Before the passing of the Crown Proceedings Act 1947<sup>3</sup>, the only methods by which redress might be sought against the Crown in the courts were by way of petition of right<sup>4</sup>, which was dependent on the grant of the royal fiat; by suits against the Attorney General for a declaration<sup>5</sup>; or by actions against ministers and government departments which had been incorporated or declared liable to suit by statute<sup>6</sup>. The Crown enjoyed numerous immunities and privileges<sup>7</sup>, in particular immunity from liability for damages for torts committed by Crown servants<sup>8</sup>. Similarly, there were available to the Crown special methods of enforcing its own claims in the courts<sup>9</sup>, and proceedings by the Crown followed special forms of procedure<sup>10</sup>.

1 See **CROWN AND ROYAL FAMILY** vol 12(1) (Reissue) PARAS 48, 52 et seq; **CROWN PROPERTY** vol 12(1) (Reissue) PARA 212. As to the maxim 'the King can do no wrong' see **CROWN AND ROYAL FAMILY** vol 12(1) (Reissue) PARA 48.

2 See **CROWN AND ROYAL FAMILY** vol 12(1) (Reissue) PARA 56.

3 See PARA 102 et seq post.

4 As to petitions of right see PARA 110 post.

5 As to actions for declarations see PARA 114 post.

6 As to ministers or government departments which formerly were liable to be sued see PARA 113 post.

7 Eg immunity from discovery (*Tomline v R* (1879) 4 Ex D 252, CA; *Re Société les Affréteurs Réunis and The Shipping Controller* [1921] 3 KB 1; see further PARA 130 post) and from being made a party to interpleader proceedings (*Candy v Maugham* (1843) 1 Dow & L 745; *The Mogileff (No 2)* [1922] P 122, CA; and see further PARA 113 post).

8 See **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 388.

9 The special methods included Latin informations and English informations and writs of scire facias and of extent: see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 391.

10 The special forms included writs of *capias ad respondendum*, writs of *subpoena ad respondendum* and writs of *appraisement*. The old rules of law and procedure are set out in Robertson's Civil Proceedings by and against the Crown.

Halsbury's Laws of England/CROWN PROCEEDINGS AND CROWN PRACTICE (VOLUME 12(1) (REISSUE))/2. THE CROWN PROCEEDINGS ACT 1947/102. The Crown Proceedings Act 1947.

## 2. THE

### 102. The Crown Proceedings Act 1947.

The Crown Proceedings Act 1947 substantially altered both the procedure to be followed in civil proceedings by and against the Crown and the substantive law governing the rights and liabilities of the Crown<sup>1</sup>.

Subject to certain exceptions<sup>2</sup>, the Act abolished the special forms of procedure which previously governed civil proceedings by and against the Crown<sup>3</sup>. As a result these proceedings are, subject to certain special provisions, governed by the same rules as proceedings between subjects. Similarly, subject to certain exceptions<sup>4</sup>, the Act enables civil proceedings to be taken against the Crown in the same circumstances as they can be taken against a subject<sup>5</sup>.

1 As to changes in substantive law made by the Crown Proceedings Act 1947 see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 382 et seq.

2 As to the exceptions generally see PARA 103 post. A further exception exists in that a petition of right still lies under the Colonial Stock Act 1877 s 20 (as amended): see PARA 110 post.

3 As to the abolition of the old forms of procedure see PARA 115 post.

4 See PARA 103 post; and see further **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 383.

5 The principal alteration in substantive law brought about by the Crown Proceedings Act 1947, is in relation to the immunity of the Crown in tort. Since the 1947 Act, the Crown is subject to liability in tort in respect of Her Majesty's government in the United Kingdom to much the same extent, subject to certain limitations or savings, as that to which it would be subject if it were a private person of full age and capacity: see the Crown Proceedings Act 1947 s 2 (as amended); para 113 post; and **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 182.

Halsbury's Laws of England/CROWN PROCEEDINGS AND CROWN PRACTICE (VOLUME 12(1) (REISSUE))/2. THE CROWN PROCEEDINGS ACT 1947/103. Matters outside the 1947 Act and excepted proceedings.

### **103. Matters outside the 1947 Act and excepted proceedings.**

The Crown Proceedings Act 1947 does not apply to proceedings by or against, or authorise proceedings in tort to be brought against Her Majesty in her private capacity<sup>1</sup>. In relation to Her Majesty in that capacity the former procedure, including petition of right, remains applicable<sup>2</sup>.

Except as otherwise expressly provided in the 1947 Act, proceedings cannot be taken against the Crown under or in accordance with the Act in respect of any alleged liability of the Crown arising otherwise than in respect of Her Majesty's government in the United Kingdom<sup>3</sup>, and the Act does not affect proceedings against the Crown in respect of any such alleged liability<sup>4</sup> or proceedings by the Crown otherwise than in right of Her Majesty's government in the United Kingdom<sup>5</sup>.

Except as otherwise expressly provided, the 1947 Act does not (1) affect the law relating to prize salvage, or apply to proceedings in the High Court as a prize court<sup>6</sup>; (2) apply to any criminal proceedings<sup>7</sup>; or (3) affect any liability imposed on the Public Trustee or on the Consolidated Fund of the United Kingdom by the Public Trustee Act 1906<sup>8</sup>. The Crown is not subject to any greater liabilities in respect of the acts or omissions of any independent contractor employed by the Crown than those to which the Crown would be subject if it were a private person<sup>9</sup>.

Similarly, except as otherwise expressly provided, the 1947 Act does not affect any rules of evidence or any presumption relating to the extent to which the Crown is bound by any Act of Parliament<sup>10</sup>; or affect any right of the Crown to demand a trial at bar or to control or otherwise intervene in proceedings affecting its rights, property or profits<sup>11</sup>.

There are savings in respect of acts done under prerogative and statutory powers<sup>12</sup> and special provisions for establishing such acts in evidence<sup>13</sup>. Before 15 May 1987 the liability of the Crown in relation to death or personal injury suffered by members of the armed forces was limited<sup>14</sup>.

The common law immunity of Her Majesty's ships<sup>15</sup> or aircraft<sup>16</sup> from proceedings in rem is preserved<sup>17</sup>.

The procedural provisions of the 1947 Act<sup>18</sup> do not apply to proceedings on the Crown side of the Queen's Bench Division<sup>19</sup> or to relator actions brought by the Attorney General or to proceedings by or against the Public Trustee, the Charity Commissioners or the Registrar of the Land Registry or any of its officers<sup>20</sup>.

1 Crown Proceedings Act 1947 s 40(1). References in the 1947 Act to Her Majesty in her private capacity are construed as including a reference to Her Majesty in right of the Duchy of Lancaster and to the Duke of Cornwall: s 38(3).

2 See **CROWN AND ROYAL FAMILY** vol 12(1) (Reissue) PARAS 48, 56.

3 'United Kingdom' means Great Britain and Northern Ireland: Interpretation Act 1978 s 5, Sch 1. 'Great Britain' means England, Scotland and Wales: Union with Scotland Act 1706, preamble art I; Interpretation Act 1978 s 22(1), Sch 2 para 5(a). Neither the Channel Islands nor the Isle of Man are within the United Kingdom. See further **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 3.

4 Crown Proceedings Act 1947 s 40(2)(b). See also *R v Secretary of State for Foreign and Commonwealth Affairs, ex p Indian Association of Alberta* [1982] QB 892, [1982] 2 All ER 118, CA (the Crown is not single and indivisible but separate in respect of each self governing territory, and thus any Crown liability to Canadian

'Indians' was not a liability within the Crown Proceedings Act 1947 s 40(2)(b)); *Trawnik v Lennox* [1985] 2 All ER 368, [1985] 1 WLR 532, CA.

'Proceedings against the Crown' includes a claim by way of set-off or counterclaim raised in proceedings by the Crown: Crown Proceedings Act 1947 s 38(2).

5 Ibid s 40(2)(c). A certificate of a Secretary of State to the effect that any alleged liability of the Crown arises otherwise than in respect of Her Majesty's government in the United Kingdom, or that proceedings by the Crown are proceedings otherwise than in right of Her Majesty's government in the United Kingdom, is conclusive for the purposes of the Act as to the matter so certified: s 40(3). Where an application for judicial review is made to quash certificates issued under s 40(2) the court is only entitled to see whether they are genuine certificates issued by the minister or some authorised person: *R v Secretary of State for Foreign and Commonwealth Affairs, ex p Trawnik* [1985] LS Gaz R 2739; followed in *Re Savage's Application* [1991] NI 103, in which Carswell J stated (obiter at 113) that while applicants would not be entitled to examine the evidence before the certifying authority in issuing the certificate, they would be entitled to adduce extraneous evidence of bad faith by the authority, notwithstanding the conclusive nature of the certificate. For an exception, where the Act is not restricted to proceedings in right of Her Majesty's government in the United Kingdom see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 118. See further **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 382.

6 Crown Proceedings Act 1947 s 40(2)(a). As to prize salvage see **PRIZE**.

7 Ibid s 40(2)(a).

8 Ibid s 40(2)(h). As to the Public Trustee see **TRUSTS** vol 48 (2007 Reissue) PARA 766 et seq. References in the Crown Proceedings Act 1947 to any enactment are to be construed as references to that enactment as amended by or under any other enactment, including the Crown Proceedings Act 1947: s 38(6).

9 Ibid s 40(2)(d). Subject to the provisions of the Act, the Crown is subject to all those liabilities in tort to which, if it were a private person of full age and capacity, it would be subject in respect of torts committed by its servants or agents: s 2(1)(a). 'Agent', when used in relation to the Crown, includes an independent contractor employed by the Crown: s 38(2). However, subject to certain provisions, no health service body is regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown: see the National Health Service and Community Care Act 1990 s 60 (as amended); and **HEALTH SERVICES** vol 54 (2008) PARAS 94, 136. See also **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 382.

10 Crown Proceedings Act 1947 s 40(2)(f); and see PARA 106 post.

11 Ibid s 40(2)(g); and see PARA 131 post.

12 See ibid s 11(1); and **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 383.

13 See ibid s 11(2) (as amended); and **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 383.

14 See ibid s 10 (as amended) (repealed by Crown Proceedings (Armed Forces) Act 1987 s 1 except in relation to anything suffered by a person in consequence of an act or omission committed before 15 May 1987); and **ARMED FORCES**. However, the Crown Proceedings Act 1947 s 10 (as amended) may be revived by an order (made by statutory instrument) of the Secretary of State by reason of any imminent national danger or of any great emergency that has arisen; or for the purposes of any warlike operations outside the UK or of any other operations which are to be carried out in connection with warlike activity of any persons in any such part of the world: see the Crown Proceedings (Armed Forces) Act 1987 s 2(1), (2), (5). Such an order may describe the purposes for which the effect of the Crown Proceedings Act 1947 s 10 (as amended) is to be revived or to cease to have effect by reference to any matter whatever and may make different provision for different cases, circumstances or persons: see the Crown Proceedings (Armed Forces) Act 1987 s 2(3). However, nothing in any such order revives the effect of the Crown Proceedings Act 1947 s 10 (as amended), or provides for it to cease to have effect, in relation to anything suffered by a person in consequence of any act or omission committed before the date on which the order came into force: see the Crown Proceedings (Armed Forces) Act 1987 ss 2(4), 5(2). See also *Mulcahy v Ministry of Defence* [1996] QB 732, [1996] 2 All ER 758, CA (no order made reviving the effect of the Crown Proceedings Act 1947 s 10 (as amended) in respect of the Arabian Gulf at the time of the Gulf War, nevertheless under the common law there was no duty of care owed by one serviceman to another in battle conditions).

The Crown Proceedings Act 1947 s 10 (as amended) was applied in *Quinn v Ministry of Defence* (28 November 1997, unreported), CA (to bar negligence claim by enlisted member of Royal Navy arising from asbestos inhalation in 1950s). For examples of cases where the Crown Proceedings Act s 10 (as amended) has been held to be inapplicable see *Bell v Secretary of State for Defence* [1986] QB 322, [1985] 3 All ER 661, CA (injury suffered in civilian hospital); *Pearce v Secretary of State for Defence* [1988] AC 755, [1988] 2 All ER 348, HL (the Crown Proceedings Act 1947 s 10 (as amended) could not be invoked to override express statutory transfer of liabilities). References in the Crown Proceedings Act 1947 s 10(1), (2) to 'anything suffered' and 'thing ...

suffered' refer to the casualty or other event caused by the act or omissions from which personal injury or death resulted and do not refer to the acts or omissions relied on as giving rise to the liability: see *Pearce v Secretary of State for Defence* supra overruling *Bell v Secretary of State for Defence* supra in part.

As to the consequential adaptations of existing enactments see the Crown Proceedings (Armed Forces) Act 1987 s 3. Expenses incurred by a minister of the Crown or government department in consequence of the Act are to be paid out of money provided by Parliament: see s 4. The Crown Proceedings (Armed Forces) Act 1987 extends to Northern Ireland: s 5(1), (3).

15 'Her Majesty's ships' means ships of which the beneficial interest is vested in Her Majesty or which are registered as government ships for the purpose of the Merchant Shipping Act 1995, or which are for the time being demised or subdemised to or in the exclusive possession of the Crown, except that it does not include any ship in which Her Majesty is interested otherwise than in right of her government in the United Kingdom unless that ship is for the time being demised or subdemised to Her Majesty in right of her government or in the exclusive possession of Her Majesty in that right: Crown Proceedings Act 1947 s 38(2); and see **SHIPPING AND MARITIME LAW**. 'Ship' has the same meaning as in the Merchant Shipping Act 1995: Crown Proceedings Act 1947 s 38(2); and see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 229.

16 'Her Majesty's aircraft' does not include aircraft belonging to Her Majesty otherwise than in right of her government in the United Kingdom: *ibid* s 38(2).

17 See *ibid* ss 12, 29; and **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 179.

18 *Ie* *ibid* Pt II (ss 13-23) (as amended).

19 In the Crown Proceedings Act 1947, 'civil proceedings' includes proceedings in the High Court or the county court for the recovery of fines or penalties, but does not include proceedings on the Crown side of the Queen's Bench Division: s 38(2); and by analogy with the equivalent statutory provisions for Jamaica see *Minister of Foreign Affairs, Trade and Industry v Vehicles and Supplies Ltd* [1991] 4 All ER 65, [1991] 1 WLR 550, PC. By virtue of that definition and the Crown Proceedings Act 1947 s 23(1), (2) (see PARA 116 post) proceedings on the Crown side are outside the scope of Pt II (as amended). For an exceptional application of the Act to proceedings on the Crown side see s 25 (as amended). As to proceedings on the Crown side see **ADMINISTRATIVE LAW**.

20 See *ibid* s 23(3); and PARA 116 post.

## UPDATE

### 103 Matters outside the 1947 Act and excepted proceedings

NOTE 4--See *Beggs v The Scottish Ministers* 2005 SLT 71, IH (proceedings for contempt of court arising from breach of undertaking by Scottish Ministers that prisoner's mail would not be opened were not proceedings against Crown).

TEXT AND NOTE 8--Words 'or on the Consolidated Fund of the United Kingdom' omitted: Crown Proceedings Act 1947 s 40(2)(h) (amended by the Public Trustee (Liability and Fees) Act 2002 s 1(2)).

NOTE 14--See also *Matthews v Ministry of Defence* [2003] UKHL 4, [2003] 1 AC 1163, [2003] 1 All ER 689; and **ARMED FORCES** vol 2(2) (Reissue) PARA 55.

Halsbury's Laws of England/CROWN PROCEEDINGS AND CROWN PRACTICE (VOLUME 12(1) (REISSUE))/2. THE CROWN PROCEEDINGS ACT 1947/104. Territorial scope.

**104. Territorial scope.**

The Crown Proceedings Act 1947 does not affect the law enforced in courts elsewhere than in England and Wales and Scotland, or the procedure in any such courts<sup>1</sup>, but the Act has been applied to Northern Ireland<sup>2</sup>, subject to additions, exceptions and modifications, by Order in Council<sup>3</sup>.

1 Crown Proceedings Act 1947 s 52. Part V (ss 41-51) applies to Scotland only.

2 See *ibid* s 53 (amended by the Northern Ireland Constitutional Act 1973 s 41(1), Sch 6, Pt I).

3 See the Crown Proceedings (Northern Ireland) Order 1981, SI 1981/233 (as amended). The Crown Proceedings Act 1947 Pt II (ss 13-23) (as amended) is also applied to Northern Ireland by the Ports (Northern Ireland) Order 1994, SI 1994/2809 (NI 16), art 17(8); and the Ports (Levy on Disposals of Land etc) Order (Northern Ireland) 1997, SR 1997/12, art 41(5).

Halsbury's Laws of England/CROWN PROCEEDINGS AND CROWN PRACTICE (VOLUME 12(1) (REISSUE))/2. THE CROWN PROCEEDINGS ACT 1947/105. Limitation of actions.

### **105. Limitation of actions.**

In general, the statutory rules as to limitation of actions apply to proceedings by and against the Crown as they apply to proceedings between subjects<sup>1</sup>. Special periods of limitation, however, apply to certain proceedings by the Crown, including proceedings for the recovery of any tax or duty, forfeiture proceedings under the enactments relating to customs and excise, proceedings in respect of the forfeiture of a ship<sup>2</sup> and actions to recover land<sup>3</sup>. In addition, actions by the Crown are not, in general, affected by laches<sup>4</sup>.

1 See the Limitation Act 1980 s 37(1). See also the Foreign Limitation Periods Act 1984 s 6(1); and **LIMITATION PERIODS** vol 68 (2008) PARA 903.

2 The Limitation Act 1980 does not apply to such proceedings: see s 37(2); and **LIMITATION PERIODS** vol 68 (2008) PARA 903.

3 See *ibid* s 15(7), Sch 1 Pt II; and **LIMITATION PERIODS** vol 68 (2008) PARA 903, 1026.

4 *Co Lit 119a*; *Sheffield v Ratcliffe* (1615) Hob 334 at 347; *A-G v Chitty* (1744) Park 37 at 48; *R v Renton* (1848) 2 Exch 216 at 220. See also **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 390.

Halsbury's Laws of England/CROWN PROCEEDINGS AND CROWN PRACTICE (VOLUME 12(1) (REISSUE))/2. THE CROWN PROCEEDINGS ACT 1947/106. Privileges of Crown in legal proceedings.

## **106. Privileges of Crown in legal proceedings.**

The general privileges and exemptions of the Crown in legal proceedings are considered elsewhere in this work<sup>1</sup>. The right of the Crown to demand a trial at bar in civil actions or to control or otherwise intervene in proceedings affecting its rights, property or profits is unaffected by the Crown Proceedings Act 1947<sup>2</sup>; as are also the right of the Crown to take advantage of the provisions of an Act of Parliament although not named in it<sup>3</sup>, and any rules of evidence or any presumption relating to the extent to which the Crown is bound by any Act of Parliament<sup>4</sup>.

1 See **CROWN AND ROYAL FAMILY** vol 12(1) (Reissue) PARAS 48, 52-56; **CROWN PROPERTY** vol 12(1) (Reissue) PARA 209 et seq.

2 See **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 535. See also PARA 101 ante.

3 Crown Proceedings Act 1947 s 31(1). In any civil proceedings against the Crown the provisions of any Act of Parliament which could, if the proceedings were between subjects, be relied upon by the defendant as a defence to the proceedings, whether in whole or in part, or otherwise, may, subject to any express provision to the contrary, be so relied upon by the Crown: s 31(1). The Debtors Act 1869 s 6 (as amended) (which empowers the court in certain circumstances to order the arrest of a defendant about to quit England) applies with any necessary modifications to civil proceedings in the High Court by the Crown: Crown Proceedings Act 1947 s 31(2). For the meaning of 'proceedings against the Crown' see PARA 103 note 4 ante.

4 See *ibid* s 40(2)(f); para 103 ante; and see further **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 384.



Halsbury's Laws of England/CROWN PROCEEDINGS AND CROWN PRACTICE (VOLUME 12(1) (REISSUE))/3. LEGAL PROCEEDINGS BY THE CROWN/107. Proceedings in lieu of abolished proceedings.

### **3. LEGAL PROCEEDINGS BY THE CROWN**

#### **107. Proceedings in lieu of abolished proceedings.**

By legal proceedings taken in accordance with the Crown Proceedings Act 1947<sup>1</sup>, the Crown may enforce any claim which might before 1 January 1948 have been enforced by any of the proceedings by the Crown which are abolished by the Act<sup>2</sup>. These proceedings enabled the Crown to recover or establish its title to property, real or personal, and to recover money by way of damages or otherwise, and provided special means of recovering debts and penalties due to the Crown<sup>3</sup>.

1 As to the procedure see PARA 115 et seq post.

2 See the Crown Proceedings Act 1947 ss 13, 23(1)(a); and PARA 116 post.

3 The abolished proceedings are: Latin informations and English informations; writs of *capias ad respondendum*, writs of *subpoena ad respondendum* and writs of *appraisement*; writs of *scire facias*; proceedings for the determination of any issue upon a writ of *extent* or of *diem clausit extremum*; and writs of summons under the Crown Suits Act 1865 Pt V (ss 54-64) (repealed); Crown Proceedings Act 1947 Sch 1 para 1. The writ of *scire facias* abolished by the Act is the writ so named on the revenue side of the Queen's Bench Division; *scire facias* on the Crown side is not affected by the Act, although it has long been in practice obsolete: see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 264; **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 391; **CORPORATIONS** vol 9(2) (2006 Reissue) PARA 1301. As to the special rights of the Crown in proceedings which might have been commenced by English information see PARA 130 post. Writs of *extent* and of *diem clausit extremum* were abolished by the Crown Proceedings Act 1947 s 33.

Halsbury's Laws of England/CROWN PROCEEDINGS AND CROWN PRACTICE (VOLUME 12(1) (REISSUE))/3. LEGAL PROCEEDINGS BY THE CROWN/108. Other proceedings.

### 108. Other proceedings.

By legal proceedings taken in accordance with the Crown Proceedings Act 1947<sup>1</sup>, the Crown may enforce any claim which might before 1 January 1948 have been enforced by an action at the suit of any government department or any officer<sup>2</sup> of the Crown as such<sup>3</sup>, and any claim arising by virtue of the Act itself<sup>4</sup>, or by virtue of legislation that repeals and replaces part of the Act<sup>5</sup>.

Certain enactments (which were repealed by the Act<sup>6</sup>) provided that a minister or government department might sue. Such provisions were merely procedural, and ministers and departments suing in accordance with them enjoyed the same privileges as the Crown itself<sup>7</sup>. Other ministers and departments which were simply incorporated by statute, without an express provision that they might sue, were similarly entitled to sue in their own name<sup>8</sup>. Moreover, apart from statute, actions might be brought in the Chancery Division by the Attorney General to protect or enforce rights of the Crown<sup>9</sup>. It would seem that all such rights must now be enforced by proceedings taken in accordance with the Act.

1 As to the procedure see PARA 115 et seq post.

2 'Officer', in relation to the Crown, includes any servant of Her Majesty, and accordingly (but without prejudice to that generality) includes a minister of the Crown: Crown Proceedings Act 1947 s 38(2). See, however, s 2(6) (see PARA 113 note 3 post) which restricts the scope of those officers for whom the Crown may be liable in tort.

3 See *ibid* ss 13, 23(1)(b); and PARA 116 post.

4 *Ibid* ss 13, 23(1)(c); and PARA 116 post. Power to take proceedings is conferred on the Crown by s 14 (as amended) (summary revenue applications; see PARA 129 post); s 16 (interpleader; see PARA 109 post).

5 Power to bring claims in relation to salvage (formerly conferred by *ibid* s 5 (now repealed)) is conferred by the Merchant Shipping Act 1995 s 230(2): see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 890.

6 *Ie* by the Crown Proceedings Act 1947 s 39(1), Sch 2 (repealed).

7 *Secretary of State for War v Cope* [1919] 2 Ch 339; *Minister of Supply v British Thomson-Houston Co Ltd* [1943] KB 478, [1943] 1 All ER 615, CA; *The Brabo* [1948] P 33, [1947] 2 All ER 363, CA; *affd* [1949] AC 326, [1949] 1 All ER 294, HL.

8 *Minister of Works and Planning v Henderson* [1947] KB 91.

9 See Robertson's Civil Proceedings by and against the Crown 237, 464. See also *A-G v Wimbledon House Estate Co Ltd* [1904] 2 Ch 34 (action for mandatory injunction to protect public rights).

## UPDATE

### 108 Other proceedings

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CROWN PROCEEDINGS AND CROWN PRACTICE (VOLUME 12(1) (REISSUE))/3. LEGAL PROCEEDINGS BY THE CROWN/109. Interpleader.

### **109. Interpleader.**

The Crown may obtain relief by way of interpleader proceedings in the same manner in which a subject may obtain relief by way of such proceedings<sup>1</sup>.

1 Crown Proceedings Act 1947 s 16; and see RSC Ord 17; CCR Ord 33. See also PARA 113 post.

### **UPDATE**

### **109 Interpleader**

TEXT AND NOTES--RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally **CIVIL PROCEDURE**.

1947 Act s 16 amended: SI 2005/2712.

Halsbury's Laws of England/CROWN PROCEEDINGS AND CROWN PRACTICE (VOLUME 12(1) (REISSUE))/4. LEGAL PROCEEDINGS AGAINST THE CROWN/110. Petitions of right.

## 4. LEGAL PROCEEDINGS AGAINST THE CROWN

### 110. Petitions of right.

Proceedings against the Crown<sup>1</sup> by way of petition of right<sup>2</sup> were abolished by the Crown Proceedings Act 1947<sup>3</sup>. Nevertheless, a petition of right still lies in certain circumstances under the Colonial Stock Act 1877<sup>4</sup>. A petition under the 1877 Act must be in the old form<sup>5</sup>. For the purposes of statutory rules on limitation of actions a proceeding by way of petition of right in any case where any such proceeding lies by virtue of any savings in the Crown Proceedings Act 1947<sup>6</sup> is to be treated as being commenced on the date on which the petition is presented<sup>7</sup>.

1 For the meaning of 'proceedings against the Crown' see PARA 103 note 4 ante.

2 This included proceedings by way of petition of right intitled in the Admiralty Division under the Naval Prize Act 1964 s 52 (repealed), and proceedings against the Crown by way of monstans de droit: Crown Proceedings Act 1947 s 13, Sch 1 para 2. Monstans de droit was an obsolete form of proceedings for recovering property which had come into the hands of the Crown by office found. As to the nature of a petition of right and the circumstances in which a petition lay see PARA 111 post.

3 Ibid Sch 1 para 2

4 Ie under the Colonial Stock Act 1877 s 20 (as amended) (see PARA 111 post) see *Franklin v A-G*[1974] QB 185, [1973] 1 All ER 879. The provisions of the Crown Proceedings Act 1947 enabling a subject to bring legal proceedings against the Crown in the usual form had no application in *Franklin v A-G* supra, since the failure to pay interest resulted in the liability of the Crown arising otherwise than in respect of Her Majesty's government in the United Kingdom within the terms of the Crown Proceedings Act 1947 s 40(2)(b) (see PARA 103 ante): *Franklin v A-G* supra at 193 and 882 per Lawson J.

5 Ie the old form in force prior to the Petitions of Right Act 1860 since that Act was repealed by the Crown Proceedings Act 1947 s 39(1), Sch 2 (repealed): see *Franklin v A-G*[1974] QB 185 at 201, [1973] 1 All ER 879 at 888.

6 Ie by the Crown Proceedings Act 1947 s 40 (as amended): see PARA 103 ante.

7 Limitation Act 1980 s 37(5). As to limitation generally see **LIMITATION PERIODS**.

## UPDATE

### 110 Petitions of right

TEXT AND NOTE 4--1877 Act repealed: Statute Law (Repeals) Act 1998.

Halsbury's Laws of England/CROWN PROCEEDINGS AND CROWN PRACTICE (VOLUME 12(1) (REISSUE))/4. LEGAL PROCEEDINGS AGAINST THE CROWN/111. Where formerly a petition of right lay.

### 111. Where formerly a petition of right lay.

Claims against the Crown which before 1 January 1948 may have been enforced, subject to the grant of the royal fiat, by petition of right may now be enforced as of right and without a fiat by legal proceedings taken against the Crown<sup>1</sup>.

A petition of right<sup>2</sup> lay for the recovery of land and incorporeal hereditaments<sup>3</sup> and for chattels<sup>4</sup>. The money claims for which a petition of right lay included claims for liquidated sums due under contracts<sup>5</sup>, money due under contracts or for services rendered<sup>6</sup>, for unliquidated damages for breach of contract<sup>7</sup>, for the estate of persons dying intestate, for death, excise and customs and other duties and dues paid to the Crown<sup>8</sup>, for compensation for interference by the Crown with a subject's property<sup>9</sup>, to a limited extent for pensions<sup>10</sup> and to claims relating to colonial stock or any dividend on it<sup>11</sup> and to colonial debentures<sup>12</sup>.

1 See the Crown Proceedings Act 1947 ss 1, 23(1), (2).

2 A petition of right was the process by which property of any kind, including money or damages, was recoverable from the Crown, whether the basis of the claimant's title was legal or equitable. See Staundford's Prerogative 72b. 'A petition of right is merely an amicable litigation against the Crown itself': *Hollinshead v Hazleton* [1916] 1 AC 428 at 450.

3 Bro Abr, Petition et Monstrans de Droit; *Doe d Legh v Roe* (1841) 8 M & W 579; *Monckton v A-G* (1850) 2 Mac & G 402; *Wicks and Dennis Case* (1589) 1 Leon 190 (rentcharge); Fitzherbert's Grand Abridgment 19 (seignior); *Re Brain* (1874) LR 18 Eq 389; *James v R* (1877) 5 ChD 153, CA (gales).

4 Chattels includes: chattels real (*Viscount Canterbury v A-G* (1842) 1 Ph 306 at 325); specific chattels (*Thomas v R* (1874) LR 10 QB 31 at 36), and perhaps their value if converted (*Tobin v R* (1964) 16 CBNS 310; *Buckland v R* [1933] 1 KB 329 at 343-344). See also Robertson's Civil Proceedings by and against the Crown 336, where the opinion is expressed that probably the remedy by petition of right did not extend to compensation or damages for the conversion of property.

5 *Thames Ironworks and Shipbuilding Co Ltd v R* (1869) 10 B & S 33 (extras under a shipbuilding contract); *Yoeman v R* [1904] 2 KB 429, CA (demurrage under a charterparty).

6 Robertson's Civil Proceedings by and against the Crown 338. Exceptionally military, naval, air force and civil officers of the Crown could not bring a petition of right to recover pay, pensions or other sums to which they might be entitled for their services: see *Re Tufnell* (1876) 3 ChD 164; *Rodwell v Thomas* [1944] KB 596; and see *Kodeeswaran v A-G of Ceylon* [1970] AC 1111 at 1117, PC.

7 *Thomas v R* (1974) LR 10 QB 31 at 36 where most of the earlier authorities were discussed.

8 Except in cases where there was another statutory method of recovery provided.

9 *A-G v De Keyser's Royal Hotel Ltd* [1920] AC 508, HL; *Re Petition of Right* [1915] 3 KB 649, CA; on appeal sub nom *Re X's Petition of Right* (1916) 32 TLR 699, HL (building taken by Crown). As to the statutory right to compensation for compulsory purchase and requisition of property see **COMPULSORY ACQUISITION OF LAND; ARMED FORCES; WAR AND ARMED CONFLICT**.

10 See *Oldham v Lords of the Treasury* (circa 1800-1827) cited in 6 Sim 220; *Owens v R* [1900] 2 IR 513.

11 Ie by the Colonial Stock Act 1877 s 20 (amended by the Statute Law Revision Act 1894) which provides that the certificate of the judgment in such a case is to be left with the registrar of the stock instead of with the Treasury and the judgment is to be complied with by him, or by some other agent of the colonial government having possession in England of money of that government instead of by the Treasury. The Colonial Stock Act 1877 s 20 (as so amended) was applied in *Franklin v A-G* [1974] QB 185, [1973] 1 All ER 879; see also *Franklin v R* [1974] QB 202n, [1973] 3 All ER 861 at 869; *Barclays Bank Ltd v R* [1974] QB 823, [1974] 1 All ER 305.

The Colonial Stock Act 1877 s 20 was amended by the Cyprus Act 1960 s 3(2), Schedule para 9(2) but only in relation to Cyprus stock; *Franklin v A-G* supra at 201 and at 887 per Lawson J. See also the Solomon Islands Act 1978 s 7(4), Schedule para 7; the Tuvalu Act 1978 s 4(3), Sch 2 para 7 (Tuvalu Stock); the Kiribati Act 1979 s 3(4), (5), Schedule para 8 (Kiribati stock); the Zimbabwe (Independence and Membership of the Commonwealth) (Consequential Provisions) Order 1980, SI 1980/701 (Zimbabwe stock); the Belize Act 1981 s 3(4), Sch 2 para 7 (Belize stock).

12 *Guerard v Mauritius Government* [1939] 2 All ER 178, PC.

## **UPDATE**

### **111 Where formerly a petition of right lay**

TEXT AND NOTE 11--1877 Act, and other Acts cited, repealed: Statute Law (Repeals) Act 1998.

Halsbury's Laws of England/CROWN PROCEEDINGS AND CROWN PRACTICE (VOLUME 12(1) (REISSUE))/4. LEGAL PROCEEDINGS AGAINST THE CROWN/112. When petition of right did not lie.

### **112. When petition of right did not lie.**

A petition of right did not lie for damages for a tort alleged to have been committed either by the Crown or by a servant of the Crown acting by the Crown's authority<sup>1</sup>, but an action can now be brought for such damages if the case falls within the provisions<sup>2</sup> of the Crown Proceedings Act 1947<sup>3</sup>.

A petition of right could not be brought in England to obtain a judgment against the Crown which was to be satisfied out of the Exchequer of a dominion, and no judgment could be obtained on a petition so brought in respect of liabilities incident to the ministry of a dominion, because such liabilities were not to be satisfied out of the Exchequer of the United Kingdom<sup>4</sup>.

Accordingly a petition of right should have been available in respect of a claim to movable property arising in a colony or dependency if the sum claimed were chargeable on the imperial, and not on the local, revenues<sup>5</sup>. Similarly, where a claim related to land abroad, a petition of right should not have been available unless the land were vested in the Crown for imperial purposes and not in the Crown for local purposes or in the local government<sup>6</sup>.

A petition of right was inapplicable to a claim to a share of funds paid to the Crown under treaty with a foreign power<sup>7</sup> and to a claim for damages for property seized by a foreign government which subsequently came under the sovereignty of the Crown by conquest<sup>8</sup>.

1 *Viscount Canterbury v A-G* (1842) 1 Ph 306; *Tobin v R* (1864) 16 CBNS 310; *Feather v R* (1865) 6 B & S 257.

2 Lie within the Crown Proceedings Act 1947 ss 2-10 (as amended; s 10 repealed by the Crown Proceedings (Armed Forces) Act 1987 s 1 except in relation to anything suffered by a person in consequence of an act or omission committed before 15 May 1987).

3 There may be some cases of restitution in which a petition of right would not have lain, but which do not fall within the provisions of the Crown Proceedings Act 1947. A petition of right lay for money had and received by the Crown, it seems, even where there was a waiver of tort: *Brocklebank Ltd v R* [1925] 1 KB 52 at 68, CA, per Scrutton LJ; and cf *United Australia Ltd v Barclays Bank Ltd* [1941] AC 1, [1940] 4 All ER 20, HL. A petition of right, however, would not have lain for money paid by the subject to the use of the Crown, or for any other claims which although not claims in tort do not fall within the claims mentioned above: *Anglo-Saxon Petroleum Co v Admiralty Comrs* [1947] KB 794, [1947] 2 All ER 465, CA. Such cases moreover do not fall within the provision of the Crown Proceedings Act 1947. See, however, *A-G v De Keyser's Royal Hotel Ltd* [1920] AC 508 at 530, HL, per Lord Dunedin ('a petition of right will lie when in consequence of what has been legally done any resulting obligation emerges on behalf of the subject. It is otherwise when the obligation arises from tort'). See also *A-G for Straits Settlements v Pang Ah Yew* [1925] AC 555, PC (where a petition of right was authorised by the terms of a colonial ordinance).

4 *A-G v Great Southern and Western Rly Co of Ireland* [1925] AC 754 at 779, HL, per Lord Phillimore.

5 See *Frith v R* (1872) LR 7 Exch 365; *Doss v Secretary of State for India in Council* (1875) LR 19 Eq 509 at 535; *Dickson v R* (1865) 11 HL Cas 175. See also *Bushe v R* (1869) Times, 29 May; *Ryland v R* (1883) Times, 18 December (both referred to in Robertson's Civil Proceedings by and against the Crown 340).

6 *Re Holmes* (1861) 2 John & H 527; *Lautour v A-G* (1864) 5 New Rep 102; on appeal (1865) 5 New Rep 231; *Reiner v Marquis of Salisbury* (1876) 2 ChD 378; *Price v R* (1925) 42 TLR 179.

7 *Baron De Bode v R* (1851) 3 HL Cas 449; *Rustomjee v R* (1876) 2 QBD 69, CA; *Civilian War Claimants Association Ltd v R* [1932] AC 14, HL; cf *Price v R* (1925) 42 TLR 179; *Administrator of German Property v Knoop* [1932] WN 269.

8 *West Rand Central Gold Mining Co v R* [1905] 2 KB 391.





Halsbury's Laws of England/CROWN PROCEEDINGS AND CROWN PRACTICE (VOLUME 12(1) (REISSUE))/4. LEGAL PROCEEDINGS AGAINST THE CROWN/113. Other proceedings.

### 113. Other proceedings.

Claims against the Crown which might before 1 January 1948 have been enforced by any statutory provision repealed by the Crown Proceedings Act 1947 may now be enforced by legal proceedings taken against the Crown<sup>1</sup>. The statutory provisions referred to are enactments which provided that a minister or a government department might be sued. The provisions were merely procedural, and ministers and departments sued in accordance with them enjoyed the same immunities and privileges as the Crown itself<sup>2</sup>.

In addition certain claims against the Crown can now be enforced by virtue of the Crown Proceedings Act 1947 itself, namely claims arising out of the liability in tort imposed on the Crown by the Act<sup>3</sup>, claims for infringements of intellectual property<sup>4</sup> or plant breeders' rights<sup>5</sup>, claims for relief by way of interpleader<sup>6</sup>, and proceedings for attachment of money payable by the Crown<sup>7</sup>.

Further, certain claims (for example, salvage claims) formerly enforceable by virtue of the Crown Proceedings Act 1947 are now enforceable by legislation that has repealed and replaced part of that Act<sup>8</sup>.

With one exception<sup>9</sup>, Parts II to IV of the Crown Proceedings Act 1947<sup>10</sup> apply to civil proceedings against the Crown under the Race Relations Act 1976<sup>11</sup> as they apply to proceedings by or against the Crown<sup>12</sup> under the Crown Proceedings Act 1947.

Parts II to IV of the Act of 1947 apply similarly to proceedings against the Crown under the Sex Discrimination Act 1975<sup>13</sup>.

1 See the Crown Proceedings Act 1947 ss 1, 13, 23(1), (2). The repeals were effected by s 39(1), Sch 2 (repealed). For the meaning of 'civil proceedings against the Crown' see PARA 103 note 4 ante.

2 Eg (save where expressly provided) actions in tort could not be brought under these enactments: see *Roper v Public Works Comrs* [1915] 1 KB 45; *Mackenzie-Kennedy v Air Council* [1927] 2 KB 517, CA; *Minister of Supply v British Thomson-Houston Co Ltd* [1943] KB 478, [1943] 1 All ER 615, CA; and see *The Brabo* [1948] P 33, [1947] 2 All ER 363, CA; affd [1949] AC 326, [1949] 1 All ER 294, HL. As to proceedings by government departments see PARA 108 ante.

3 See the Crown Proceedings Act 1947 s 2 (as amended); and **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 382-383. Where any functions are conferred or imposed upon an officer of the Crown as such either by any rule of the common law or by statute, and that officer commits a tort while performing or purporting to perform those functions, the liabilities of the Crown in respect of the tort are such as they would have been if those functions had been conferred or imposed solely by virtue of instructions lawfully given by the Crown: s 2(3). For the meaning of 'officer' see PARA 108 note 2 ante. No proceedings in tort will lie against the Crown unless the officer concerned was directly or indirectly appointed by the Crown and was at the material time paid in respect of his duties as an officer of the Crown wholly out of the Consolidated Fund of the United Kingdom, moneys provided by Parliament or any other fund certified by the Treasury for this purpose or was at the material time holding an office in respect of which the Treasury certifies that the holder of it would normally so be paid: s 2(6) (amended by the Statute Law (Repeals) Act 1981); and see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 383. As to the Consolidated Fund see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 711 et seq.

See also *R v HM Treasury, ex p Petch* [1990] COD 19 (the Prime Minister, in her capacity as First Lord of the Treasury, was not 'the Crown' for the purposes of the Crown Proceedings Act 1947 s 2(2), but rather 'an officer of the Crown ... by statute' within the terms of s 2(3), and thus the Treasury did not enjoy immunity under s 2(2) as exercising a statutory duty not binding on persons other than the Crown). See also *Welsh v Chief Constable of the Merseyside Police* [1993] 1 All ER 692 at 699, and *Jones v Department of Employment* [1989] QB 1, [1988] 1 All ER 725, CA (the Crown Proceedings Act 1947 s 2(5) is directed to the immunity of judicial not administrative functions); *Trawnik v Lennox* [1985] 2 All ER 368, [1985] 1 WLR 532, CA.

4 See the Crown Proceedings Act 1947 s 3 (as substituted); and **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 383; **COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS** vol 9(2) (2006 Reissue) PARA 410; **PATENTS AND REGISTERED DESIGNS** vol 79 (2008) PARAS 525, 771; **TRADE MARKS AND TRADE NAMES** vol 48 (2007 Reissue) PARA 417.

5 See the Plant Varieties Act 1997 s 39(1), which has effect as if contained in the Crown Proceedings Act 1947 Pt I (ss 1-12) (as amended); Plant Varieties Act 1997 s 39(3). See further **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARAS 1191, 1194.

6 The Crown may be made a party to interpleader proceedings in the same manner in which a subject may be made a party to such proceedings, and notwithstanding that the application for relief is made by sheriff or other like officer, and all rules of court and county court rules relating to interpleader proceedings (see RSC Ord 17; CCR Ord 33) have effect accordingly: Crown Proceedings Act 1947 s 16. See further PARA 129 post. As to the Crown's obtaining relief by interpleading see PARA 109 ante.

7 See PARA 135 post.

8 Salvage claims were formerly enforceable by the Crown Proceedings Act 1947 s 5 (now repealed) and are now enforceable by the Merchant Shipping Act 1995 s 230: see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 890.

9 As an exception, the Crown Proceedings Act 1947 s 20 (as amended) (removal of proceedings from county court to High Court; see PARA 132 post) does not apply to proceedings against the Crown under the Race Relations Act 1976: see s 75(6); and **DISCRIMINATION** vol 13 (2007 Reissue) PARA 445.

10 In the Crown Proceedings Act 1947 Pt II (ss 13-23) (as amended), Pt III (ss 24-27) (as amended), Pt IV (ss 28-40) (as amended).

11 See the Race Relations Act 1976 s 75(6). As to the application of the Race Relations Act 1976 to the Crown see **DISCRIMINATION** vol 13 (2007 Reissue) PARA 445. As to the application of the Race Relations Act 1976 to protect officers of the Crown see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 10.

12 In by virtue of the Crown Proceedings Act 1947 s 23 (as amended); see PARA 116 post.

13 See the Sex Discrimination Act 1975 s 85(8), which excepts the Crown Proceedings Act 1947 s 20 (as amended) (see PARA 132 post). As to the application of the Sex Discrimination Act 1975 to the Crown generally see s 85 (amended by the Armed Forces Act 1981 s 28(2), Sch 5 Pt I); and see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 10.

## UPDATE

### 113 Other proceedings

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

NOTE 6--RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally **CIVIL PROCEDURE**.

Words 'and county court rules' omitted: 1947 Act s 16 (amended by SI 2005/2712).

NOTE 11--1976 Act s 75(6) amended: SI 2005/2712.

NOTE 13--1975 Act s 85(8) amended: SI 2005/2712.

Halsbury's Laws of England/CROWN PROCEEDINGS AND CROWN PRACTICE (VOLUME 12(1) (REISSUE))/4. LEGAL PROCEEDINGS AGAINST THE CROWN/114. Action for declaratory judgment.

#### **114. Action for declaratory judgment.**

Before 1 January 1948 it was possible to sue the Attorney General, as representing the Crown, for a declaration which indirectly, or possibly for a declaration which might directly, affect the rights of the Crown<sup>1</sup>. This remedy falls within the Crown Proceedings Act 1947<sup>2</sup>, and is now governed by the procedural provisions of the Act<sup>3</sup>. The court will, however, apply the same principles as before in determining whether or not to grant the relief<sup>4</sup>. This form of proceedings cannot be used to obtain a decision as to a future and hypothetical question<sup>5</sup>. The court will not make declarations in general terms regarding the power of Parliament<sup>6</sup>; nor will the court at the suit of a subject make declarations regarding the prerogative power of the Crown to enter into treaties<sup>7</sup>.

1 *Dyson v A-G* [1911] 1 KB 410, CA; *Dyson v A-G* [1912] 1 Ch 158, CA; *Esquimalt and Nanaimo Rly Co v Wilson* [1920] AC 358, PC; *Re Chamberlain's Settlement* [1921] 2 Ch 533. See also *Pawlett v A-G* (1667) Hard 465; *Laragoity v A-G* (1816) 2 Price 172; *Deare v A-G* (1835) 1 Y & C Ex 197; *Hodge v A-G* (1838) 3 Y & C Ex 342. But it was not possible to use this procedure (which needed no fiat) to bring before the court a matter which might have to be adjudicated in a petition of right: *Bombay and Persia Steam Navigation Co v MacLay* [1920] 3 KB 402 at 408. Where an action against the Crown had not been brought under or in accordance with the Crown Proceedings Act 1947 and had been barred by a certificate of the Secretary of State given under s 40(3)(a) (see PARA 103 ante), it was held that the Attorney General could not then be sued under the common law for a declaration based on an anticipated tort by Crown servants: see *Trawnik v Lennox* [1985] 2 All ER 368, [1985] 1 WLR 532, CA.

2 Proceedings for the enforcement or vindication of any right or the obtaining of any relief which might formerly have been enforced or vindicated or obtained by an action against the Attorney General are included in the definition of 'civil proceedings against the Crown': see PARA 116 post. See also *Trawnik v Lennox* [1985] 2 All ER 368, [1985] 1 WLR 532, CA. In *Tito v Waddell (No 2)* [1977] Ch 106 at 259, [1977] 3 All ER 129 at 256 it was held that declaratory relief against Attorney General should be sought under the Crown Proceedings Act 1947 and not otherwise.

3 See PARA 134 post. Actions for declarations are governed by RSC Ord 15 r 16 (as applied to Crown proceedings by Ord 77 r 1). See also *Trawnik v Lennox* [1985] 2 All ER 368, [1985] 1 WLR 532, CA.

4 See *Re Barnato, Joel v Sanges* [1949] Ch 258, [1949] 1 All ER 515, CA. As to the principles on which the discretion to grant a declaration is exercised see **JUDICIAL REVIEW** vol 61 (2010) PARA 692.

5 See *Re Barnato, Joel v Sanges* [1949] Ch 258, [1949] 1 All ER 515, CA (where the court refused to make the Crown a respondent to proceedings to determine what death duties would be payable in the event of a beneficiary dying within five years from the date of a proposed advancement out of trust funds).

6 *Blackburn v A-G* [1971] 2 All ER 1380 at 1383, [1971] 1 WLR 1037 at 1040, CA, per Lord Denning MR, and at 1383 and 1041 per Stamp LJ.

7 *Blackburn v A-G* [1971] 2 All ER 1380 at 1383, [1971] 1 WLR 1037 at 1040, CA, per Lord Denning MR, and at 1383 and at 1041 per Salmon and Stamp LJ; confirmed in *JH Rayner (Mincing Lane) Ltd v Department of Trade and Industry, MacLaine Watson & Co Ltd v Department of Trade and Industry, MacLaine Watson & Co Ltd v International Tin Council* [1990] 2 AC 418 at 499-500, sub nom *MacLaine Watson & Co Ltd v Department of Trade and Industry, MacLaine Watson & Co Ltd v International Tin Council* [1989] 3 All ER 523 at 544-545, HL; and see *Council of Civil Service Unions v Minister for the Civil Service* [1985] AC 374 at 418, [1984] 3 All ER 935 at 956, HL; cf *R v Secretary of State for Foreign and Commonwealth Affairs, ex p Rees-Mogg* [1994] QB 552 at 569-570, [1994] 1 All ER 457 at 469-470, DC.

#### **UPDATE**

#### **114 Action for declaratory judgment**

TEXT AND NOTES--In exceptional circumstances, it may be proper for a member of the public to bring proceedings against the Crown for a declaration that certain proposed conduct is lawful and name the Attorney General as the formal defendant: *R (on the application of Pretty) v DPP* [2001] UKHL 61, [2002] 1 AC 800, [2002] 1 All ER 1, followed in *R (on the application of Rusbridger) v A-G* [2003] UKHL 38, [2003] 3 All ER 784.

NOTE 3--RSC replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally **CIVIL PROCEDURE**.

RSC Ord 77 revoked: SI 2005/2292.

Halsbury's Laws of England/CROWN PROCEEDINGS AND CROWN PRACTICE (VOLUME 12(1) (REISSUE))/5. PROCEDURE UNDER THE CROWN PROCEEDINGS ACT 1947/(1) INTRODUCTION/115. Abolition of old forms of procedure.

## **5. PROCEDURE UNDER THE**

### **(1) INTRODUCTION**

#### **115. Abolition of old forms of procedure.**

Subject to the provisions of the Crown Proceedings Act 1947<sup>1</sup>, the special forms of procedure under which proceedings were brought by and against the Crown prior to 1 January 1948 have been abolished<sup>2</sup>.

1 As to territorial scope of the Crown Proceedings Act 1947 see PARA 104 ante. As to proceedings by or against Her Majesty in her private capacity see PARA 103 ante.

2 See PARAS 107, 110 ante. At the date at which this volume states the law, a petition of right still lies under the Colonial Stock Act 1877 s 20 (as amended): see PARA 110 ante.

#### **UPDATE**

##### **115-137 Procedure under the Crown Proceedings Act 1947**

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally **CIVIL PROCEDURE**.

RSC Ord 77; CCR Ord 42 revoked: SI 2005/2292. As to proceedings by and against the Crown see now CPR Pt 66.

Halsbury's Laws of England/CROWN PROCEEDINGS AND CROWN PRACTICE (VOLUME 12(1) (REISSUE))/5. PROCEDURE UNDER THE CROWN PROCEEDINGS ACT 1947/(1) INTRODUCTION/116. Civil proceedings by or against the Crown.

## **116. Civil proceedings by or against the Crown.**

The 'civil proceedings by the Crown' to which the procedural provisions of the Crown Proceedings Act 1947<sup>1</sup> relate are proceedings for the enforcement or vindication of any right or the obtaining of any relief which might previously have been enforced or vindicated or obtained by the proceedings abolished by the Act<sup>2</sup> or by an action at the suit of any government department or officer of the Crown as such<sup>3</sup>, and proceedings which the Crown is entitled to bring by virtue of the Act<sup>4</sup>.

The 'civil proceedings against the Crown' to which the procedural provisions of the 1947 Act relate are proceedings for the enforcement or vindication of any right or the obtaining of any relief which might previously have been enforced or vindicated or obtained by the proceedings abolished by the Act<sup>5</sup> or by an action against the Attorney General<sup>6</sup>, any government department or any officer of the Crown as such<sup>7</sup>, and proceedings which any person is entitled to bring against the Crown by virtue of the Act<sup>8</sup>.

'Civil proceedings' include proceedings in the High Court or a county court for the recovery of fines or penalties, but not proceedings on the Crown side of the Queen's Bench Division<sup>9</sup>. Certain proceedings are specifically excepted from the scope of the procedural provisions of the 1947 Act. These proceedings are proceedings brought by the Attorney General on the relation of some other person<sup>10</sup>, proceedings by or against the Public Trustee<sup>11</sup>, proceedings by or against the Charity Commissioners<sup>12</sup> and proceedings by or against the Registrar of the Land Registry or any officers of that registry<sup>13</sup>.

1    Ie the Crown Proceedings Act 1947 Pt II (ss 13-23) (as amended).

2    Ibid s 23(1)(a). As to the proceedings which were abolished by the Crown Proceedings Act 1947 see PARA 107 note 3 ante.

3    Ibid s 23(1)(b).

4    Ibid s 23(1)(c). For the meaning of 'civil proceedings' see PARA 103 note 19 ante. The terms 'civil proceedings by the Crown', 'civil proceedings against the Crown' and 'civil proceedings by or against the Crown' have the same meanings in RSC Ord 77 as they have in the Crown Proceedings Act 1947 Pt II (as amended) and do not include any of the proceedings specified in s 23(3) (as amended): RSC Ord 77 r 1(2). 'Civil proceedings against the Crown' also includes third party proceedings against the Crown: *St Martin's Property Investments Ltd v Philips Electronics (UK) Ltd (Secretary of State for the Environment, third party)* [1995] Ch 73, [1995] 1 All ER 378. However, this phrase probably does not include wardship proceedings: *Re JS (a minor)* [1990] Fam 182 at 185, [1990] 2 All ER 861 at 863. See also **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 182.

5    Crown Proceedings Act 1947 s 23(2)(a). As to the abolition of petitions of right see PARA 110 ante. As to other claims against the Crown see PARA 113 ante.

6    As to actions for declaratory judgments formerly brought against the Attorney General see PARA 114 ante.

7    Crown Proceedings Act 1947 s 23(2)(b). As to proceedings brought formerly against a minister or government department see PARA 113 ante.

8    Ibid s 23(2)(c). As to the bringing of civil proceedings against the Crown see PARA 102 ante. For the meaning of 'proceedings against the Crown' see PARA 103 note 4 ante.

9    See PARA 103 note 19 ante. Subject to the provisions of any Order in Council, ibid Pt II (as amended) does not affect proceedings initiated in any court other than the High Court or a county court: s 23(4).

10 See *ibid* s 23(3)(a); and PARA 103 ante. In relation to costs, the Crown is not to be deemed to be a party to any proceedings by reason only that the proceedings are proceedings by the Attorney General on the relation of some other person: Administration of Justice (Miscellaneous Provisions) Act 1933 s 7(2). As to relator actions generally see **CHARITIES** vol 8 (2010) PARA 607 et seq; **CIVIL PROCEDURE**.

11 Crown Proceedings Act 1947 s 23(3)(b). As to the Public Trustee see **TRUSTS** vol 48 (2007 Reissue) PARA 766 et seq.

12 *Ibid* s 23(3)(c). As to the Charity Commissioners see **CHARITIES** vol 8 (2010) PARA 538 et seq.

13 *Ibid* s 23(3)(f). See generally **LAND REGISTRATION**.

## **UPDATE**

### **115-137 Procedure under the Crown Proceedings Act 1947**

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally **CIVIL PROCEDURE**.

RSC Ord 77; CCR Ord 42 revoked: SI 2005/2292. As to proceedings by and against the Crown see now CPR Pt 66.

### **116 Civil proceedings by or against the Crown**

NOTES 1-4--See also CPR 66.2, 66.3 (added by SI 2005/2292).

TEXT AND NOTE 12--Reference to Charity Commissioners is now to Charity Commission: 1947 Act s 23(3)(c) (amended by the Charities Act 2006 Sch 8 para 32).

Halsbury's Laws of England/CROWN PROCEEDINGS AND CROWN PRACTICE (VOLUME 12(1) (REISSUE))/5. PROCEDURE UNDER THE CROWN PROCEEDINGS ACT 1947/(1) INTRODUCTION/117. Proceedings in the High Court.

### **117. Proceedings in the High Court.**

All civil proceedings by or against the Crown<sup>1</sup> in the High Court are to be instituted and proceeded with in accordance with rules of court and not otherwise<sup>2</sup>.

<sup>1</sup> For the meaning of 'civil proceedings by the Crown' and 'civil proceedings against the Crown' see PARA 116 ante. For the meaning of 'civil proceedings' see PARA 103 note 19 ante.

<sup>2</sup> Crown Proceedings Act 1947 s 13. The Rules of the Supreme Court apply to civil proceedings to which the Crown is a party subject to RSC Ord 77: Ord 77 r 1(1). 'Rules of court' in relation to any claim against the Crown in the High Court which falls within the jurisdiction of that court as a prize court, means rules of court made under the Prize Courts Act 1894 s 3: Crown Proceedings Act 1947 s 13. As to proceedings in prize see the Prize Court Rules 1939, SR & O 1939/1466; and **PRIZE**.

### **UPDATE**

#### **115-137 Procedure under the Crown Proceedings Act 1947**

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally **CIVIL PROCEDURE**.

RSC Ord 77; CCR Ord 42 revoked: SI 2005/2292. As to proceedings by and against the Crown see now CPR Pt 66.



Halsbury's Laws of England/CROWN PROCEEDINGS AND CROWN PRACTICE (VOLUME 12(1) (REISSUE))/5. PROCEDURE UNDER THE CROWN PROCEEDINGS ACT 1947/(1) INTRODUCTION/118. Proceedings in county courts.

### **118. Proceedings in county courts.**

Subject to the provisions of any enactment limiting the jurisdiction of a county court<sup>1</sup>, whether by reference to the subject matter of the proceedings to be brought or the amount sought to be recovered in the proceedings or otherwise, any proceedings by the Crown<sup>2</sup> may be instituted in a county court<sup>3</sup>. Subject to the same provisions and to those of the Crown Proceedings Act 1947, any civil proceedings against the Crown<sup>4</sup> may be instituted in a county court<sup>5</sup>. Any proceedings by or against the Crown in a county court are to be instituted and proceeded with in accordance with the County Court Rules and not otherwise<sup>6</sup>.

1 As to the jurisdiction of county courts see **COURTS**.

2 'Proceedings by the Crown' is not defined but it will in practice presumably be confined to 'civil proceedings by the Crown' as defined in the Crown Proceedings Act 1949 s 23 (as amended): see PARA 116 ante.

3 County Courts Act 1984 s 46(1). Section 46 does not apply to proceedings by Her Majesty in her private capacity: s 46(3).

4 As to civil proceedings against the Crown see PARA 116 ante.

5 Crown Proceedings Act 1947 s 15(1).

6 Ibid s 15(2). As to the application of the County Court Rules to proceedings to which the Crown is a party, and as to the transfer to the High Court of county court proceedings to which the Crown is a party, see **COURTS**.

### **UPDATE**

#### **115-137 Procedure under the Crown Proceedings Act 1947**

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally **CIVIL PROCEDURE**.

RSC Ord 77; CCR Ord 42 revoked: SI 2005/2292. As to proceedings by and against the Crown see now CPR Pt 66.

#### **118 Proceedings in county courts**

TEXT AND NOTE 6--Reference to County Court Rules is now to rules of court: 1947 Act s 15(2) (amended by SI 2005/2712).

Halsbury's Laws of England/CROWN PROCEEDINGS AND CROWN PRACTICE (VOLUME 12(1) (REISSUE))/5. PROCEDURE UNDER THE CROWN PROCEEDINGS ACT 1947/(2) PARTIES/119. Parties to proceedings; in general.

## (2) PARTIES

### 119. Parties to proceedings; in general.

Civil proceedings by the Crown<sup>1</sup> are instituted either by an authorised government department in its own name, whether that department was or was not immediately before 1 January 1949 authorised to sue<sup>2</sup>, or by the Attorney General<sup>3</sup>. Civil proceedings against the Crown<sup>4</sup> are instituted against the appropriate authorised government department or, if none of the authorised government departments is appropriate or the person instituting the proceedings has any reasonable doubt whether any and if so which of those departments is appropriate, against the Attorney General<sup>5</sup>. The Minister for the Civil Service publishes a list specifying the several government departments which are authorised departments for these purposes, and the name and address for service of the person who is, or is acting for the purposes of the Crown Proceedings Act 1947 as, the solicitor for each such department, and may from time to time amend or vary the list<sup>6</sup>.

On application made<sup>7</sup>, the court may substitute an authorised government department for the Attorney General as defendant, or substitute the Attorney General or another authorised government department for a department which has been made defendant, and on such an order being made the proceedings continue as if they had been commenced against the substituted defendant<sup>8</sup>. No proceedings instituted by or against the Attorney General or an authorised government department abate or are affected by any change in the person holding the office of Attorney General or in the person or body of persons constituting the department<sup>9</sup>.

The Commissioners of Inland Revenue may not be added as a party to any cause or matter except with their consent signified in writing or in such manner as may be authorised<sup>10</sup>.

1 For the meaning of 'civil proceedings by the Crown' see PARA 116 ante; and for the meaning of 'civil proceedings' see PARA 103 note 19 ante.

2 As to government departments formerly authorised to sue in their own names see PARA 108 ante.

3 Crown Proceedings Act 1947 s 17(2).

4 For the meaning of 'civil proceedings against the Crown' see PARA 116 ante.

5 Crown Proceedings Act 1947 s 17(3). See *Trawnik v Lennox*[1985] 2 All ER 368, [1985] 1 WLR 532, CA.

6 Ibid s 17(1) (amended by the Minister for the Civil Service Order 1968, SI 1968/1656, art 3(2)). Any document purporting to be an official copy of such a list and purporting to be printed under the superintendence or authority of HMSO, must be received in any legal proceedings as evidence for the purpose of establishing what departments are authorised departments, and what person is, or is acting as, the solicitor for any such department: s 17(1). The Civil Service Handbook (published annually by the Stationery Office) contains the name of the relevant solicitor for each government department.

7 In the High Court, the application is by summons: RSC Ord 77 r 18(1). As to the procedure on an application by summons see **CIVIL PROCEDURE**. In the county court, the mode of application is regulated by CCR Ord 13 r 1. As to practice and procedure generally see **CIVIL PROCEDURE**.

8 See the Crown Proceedings Act 1947 s 17(4).

9 Ibid s 17(5). Civil proceedings against the Crown may be instituted under RSC Ord 39 r 15 (perpetuation of testimony), in any case in which the Crown is alleged to have an interest or estate in the honour, title, dignity or office or property in question: Ord 77 r 14(1).

10 RSC Ord 77 r 8A. This is so, notwithstanding Ord 15 r 6(2)(b)(ii): Ord 77 r 8A. Order 15 r 6(2)(b)(ii), provides for the joinder in proceedings, by order of the court, of any person between whom and any party to the cause or matter there may exist a question or issue arising out of or relating to or connected with any relief or remedy claimed in the cause or matter which in the opinion of the court it would be just and convenient to determine as between him and that party as well as between the parties to the cause or matter. The commissioners may, however, themselves apply to be joined as a party under Ord 15 r 6.

## **UPDATE**

### **115-137 Procedure under the Crown Proceedings Act 1947**

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally **CIVIL PROCEDURE**.

RSC Ord 77; CCR Ord 42 revoked: SI 2005/2292. As to proceedings by and against the Crown see now CPR Pt 66.

### **119 Parties to proceedings; in general**

TEXT AND NOTE 6--The 2003 list of authorised government departments and the names and addresses of persons acting as solicitors for such has been published (ISBN 0114301816) and supersedes earlier lists.

Halsbury's Laws of England/CROWN PROCEEDINGS AND CROWN PRACTICE (VOLUME 12(1) (REISSUE))/5. PROCEDURE UNDER THE CROWN PROCEEDINGS ACT 1947/(2) PARTIES/120. Parties in proceedings relating to the duchies of Cornwall and Lancaster.

## **120. Parties in proceedings relating to the duchies of Cornwall and Lancaster.**

In proceedings in the High Court and in all inferior courts relating to the Duchy of Cornwall<sup>1</sup> the proper party to represent the duchy is: (1) when there is no duke, the Attorney General to the duchy<sup>2</sup>; (2) when there is a duke, the Attorney General to the duke, but when the duke is also the Prince of Wales<sup>3</sup>, the Attorney General to the prince<sup>4</sup>.

In proceedings (whether in the High Court or an inferior court) in which the interests of the monarch in right of the Duchy of Lancaster<sup>5</sup> are concerned, the proper party, if the proceedings relate to bona vacantia<sup>6</sup>, is the Solicitor for the Affairs of the Duchy of Lancaster<sup>7</sup> and, in all other proceedings, is the Attorney General to the duchy<sup>8</sup>.

1 The Crown Proceedings Act 1947 does not apply to the Duke of Cornwall: see PARA 103 ante. As to the title to the duchy see **CROWN PROPERTY** vol 12(1) (Reissue) PARA 318.

2 When there is no duke the reigning monarch will appoint the Attorney General.

3 See **CROWN AND ROYAL FAMILY** vol 12(1) (Reissue) PARA 30.

4 Information supplied by the Solicitor to the Duchy of Cornwall.

5 The Crown Proceedings Act 1947 does not apply to Her Majesty in right of the Duchy of Lancaster: see PARA 103 ante. As to the title to the duchy see **CROWN PROPERTY** vol 12(1) (Reissue) PARA 300.

6 As to bona vacantia see **CROWN PROPERTY** vol 12(1) (Reissue) PARA 231 et seq.

7 See the Duchy of Lancaster Act 1920 s 3(3) (amended by the Statute Law (Repeals) Act 1981 s 1(1), Schedule Pt I).

8 *A-G of Duchy of Lancaster v Moresby* [1919] WN 69; but cf *Re Kershaw* (1882) 21 ChD 613, CA; *A-G of Duchy of Lancaster v GE Overton (Farms) Ltd* [1982] 1 All ER 524, CA (treasure trove).

## **UPDATE**

### **115-137 Procedure under the Crown Proceedings Act 1947**

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally **CIVIL PROCEDURE**.

RSC Ord 77; CCR Ord 42 revoked: SI 2005/2292. As to proceedings by and against the Crown see now CPR Pt 66.

Halsbury's Laws of England/CROWN PROCEEDINGS AND CROWN PRACTICE (VOLUME 12(1) (REISSUE))/5. PROCEDURE UNDER THE CROWN PROCEEDINGS ACT 1947/(2) PARTIES/121. Effect of demise of Crown.

### **121. Effect of demise of Crown.**

No claims by or against the Crown, and no proceedings for the enforcement of any such claim, abate or are affected by the demise of the Crown<sup>1</sup>.

<sup>1</sup> Crown Proceedings Act 1947 s 32. As to the effect of the demise of the Crown see **CROWN AND ROYAL FAMILY** vol 12(1) (Reissue) PARAS 15-17.

### **UPDATE**

#### **115-137 Procedure under the Crown Proceedings Act 1947**

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally **CIVIL PROCEDURE**.

RSC Ord 77; CCR Ord 42 revoked: SI 2005/2292. As to proceedings by and against the Crown see now CPR Pt 66.

Halsbury's Laws of England/CROWN PROCEEDINGS AND CROWN PRACTICE (VOLUME 12(1) (REISSUE))/5. PROCEDURE UNDER THE CROWN PROCEEDINGS ACT 1947/(3) PRACTICE AND PROCEDURE/122. In general.

### **(3) PRACTICE AND PROCEDURE**

#### **122. In general.**

In general, subject to certain special rules of practice and procedure<sup>1</sup>, civil proceedings by or against the Crown whether in the High Court or county court take the same form as civil proceedings between subjects<sup>2</sup>.

1 As to the High Court see RSC Ord 77; and as to the county court see CCR Ord 42 rr 1-14.

2 See the Crown Proceedings Act 1947 ss 13, 15; and PARAS 117-118 ante. As to summary applications to the High Court in certain revenue matters see s 14 (as amended); and PARA 128 post. As to procedure generally see **CIVIL PROCEDURE; COURTS**.

#### **UPDATE**

#### **115-137 Procedure under the Crown Proceedings Act 1947**

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally **CIVIL PROCEDURE**.

RSC Ord 77; CCR Ord 42 revoked: SI 2005/2292. As to proceedings by and against the Crown see now CPR Pt 66.

Halsbury's Laws of England/CROWN PROCEEDINGS AND CROWN PRACTICE (VOLUME 12(1) (REISSUE))/5. PROCEDURE UNDER THE CROWN PROCEEDINGS ACT 1947/(3) PRACTICE AND PROCEDURE/123. Commencement of proceedings and venue.

### **123. Commencement of proceedings and venue.**

In any case in which civil proceedings against the Crown<sup>1</sup> in the High Court<sup>2</sup> are instituted by the issue of a writ out of a district registry the Crown may enter an appearance either in the district registry or in the central office of the High Court, and if an appearance is entered in the central office all steps in relation to the proceedings up to trial are to be taken at the Royal Courts of Justice<sup>3</sup>. Except where otherwise provided by any Act or rule, an action against the Crown in a county court must be commenced in the court for the district in which the cause of action wholly or in part arose<sup>4</sup>. If there is any reasonable doubt as to the court in which the proceedings should be commenced, the proceedings may be commenced in the court for the district in which the plaintiff or one of the plaintiffs resides or carries on business<sup>5</sup>.

1 As to civil proceedings against the Crown see PARA 116 ante; and for the meaning of 'civil proceedings' see PARA 103 note 19 ante.

2 See PARA 117 ante.

3 Crown Proceedings Act 1947 s 19(1). As to the transfer of proceedings under RSC Ord 4 r 5 to a district registry see PARA 132 post. The Crown may acknowledge service of the writ either in the district registry or, at the option of the Crown, in the appropriate office of the Supreme Court at the Royal Courts of Justice: see Ord 77 r 2(2). As to the mode and venue of trial see further PARA 131 post.

4 See CCR Ord 42 r 2(1), (2). As to practice and procedure generally see **CIVIL PROCEDURE**.

5 See CCR Ord 42 r 2(3). As to practice and procedure generally see **CIVIL PROCEDURE**.

### **UPDATE**

#### **115-137 Procedure under the Crown Proceedings Act 1947**

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally **CIVIL PROCEDURE**.

RSC Ord 77; CCR Ord 42 revoked: SI 2005/2292. As to proceedings by and against the Crown see now CPR Pt 66.

### **123 Commencement of proceedings and venue**

TEXT AND NOTES--Repealed: SI 2005/2712.

Halsbury's Laws of England/CROWN PROCEEDINGS AND CROWN PRACTICE (VOLUME 12(1) (REISSUE))/5. PROCEDURE UNDER THE CROWN PROCEEDINGS ACT 1947/(3) PRACTICE AND PROCEDURE/124. Service.

## **124. Service.**

All documents required to be served on the Crown for the purpose of or in connection with civil proceedings by or against the Crown<sup>1</sup> must, if the proceedings are by or against an authorised government department<sup>2</sup>, be served on the solicitor, or person acting as solicitor, for that department<sup>3</sup>, or if there is no solicitor and no person so acting, or if the proceedings are brought by or against the Attorney General, on the Solicitor for the affairs of Her Majesty's Treasury<sup>4</sup>.

The ordinary rules as to service out of the jurisdiction<sup>5</sup> apply in the case of proceedings by the Crown, but not in the case of proceedings against the Crown<sup>6</sup>.

1 As to civil proceedings by and against the Crown see PARA 116 ante. For the meaning of 'civil proceedings' see PARA 103 note 19 ante.

2 As to proceedings by or against authorised government departments see PARA 119 ante.

3 See PARA 119 note 6 ante.

4 Crown Proceedings Act 1947 s 18. Personal service of any document required to be served on the Crown is not required in the High Court: RSC Ord 77 r 4(2). Where the proceedings are by or against the Crown, service on the Crown must be effected: (1) by leaving the document at the office of the person who is to be served in accordance with the Crown Proceedings Act 1947 s 18, or of any agent whom that person has nominated for the purpose, but in either case with a member of the staff of that person or agent; or (2) by posting it in a prepaid envelope addressed to the person to be served in head (1) above or to any such agent: RSC Ord 77 r 4(2)(a), (b). In connection with proceedings by or against the Crown, Ord 65 r 5 (ordinary service) r 9 (exemption from service in certain cases), do not apply; and Ord 65 r 7 (service after certain hours) applies with modification: Ord 77 r 4(3). As to service in the High Court see **CIVIL PROCEDURE**; and as to service on the Crown in the county court see **COURTS**.

5 I.e. RSC Ords 10, 11; CCR Ord 8 rr 1-12. The Civil Jurisdiction and Judgments Act 1982 binds the Crown (s 51(1)), but references in that Act to the Crown do not include references to Her Majesty in her private capacity or to Her Majesty in right of Her Duchy of Lancaster or to the Duke of Cornwall (s 51(2)).

6 RSC Ord 77 r 4(1); CCR Ord 42 r 7(1); and see **CIVIL PROCEDURE**.

## **UPDATE**

### **115-137 Procedure under the Crown Proceedings Act 1947**

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally **CIVIL PROCEDURE**.

RSC Ord 77; CCR Ord 42 revoked: SI 2005/2292. As to proceedings by and against the Crown see now CPR Pt 66.



Halsbury's Laws of England/CROWN PROCEEDINGS AND CROWN PRACTICE (VOLUME 12(1) (REISSUE))/5. PROCEDURE UNDER THE CROWN PROCEEDINGS ACT 1947/(3) PRACTICE AND PROCEDURE/125. Particulars in indorsement of claim.

### **125. Particulars in indorsement of claim.**

Where civil proceedings are commenced against the Crown<sup>1</sup> by writ, the indorsement of claim must include a statement of the circumstances in which the Crown's liability is alleged to have arisen and as to the government department and officers<sup>2</sup> of the Crown concerned<sup>3</sup>. If the defendant considers that the writ does not contain a sufficient statement as so required, he may, before the expiration of the time limited for acknowledging service of the writ, apply to the plaintiff by notice for a further and better statement containing such information as may be specified in the notice<sup>4</sup>.

In civil proceedings against the Crown in a county court, the particulars of claim must contain similar information<sup>5</sup>.

1 As to civil proceedings against the Crown see PARA 116 ante. For the meaning of 'civil proceedings' see PARA 103 note 19 ante (definition applicable to RSC Ord 77 which was made under the Crown Proceedings Act 1947 s 35(2)).

2 For the meaning of 'officer' see PARA 108 note 2 ante. See also PARA 113 note 3 ante.

3 RSC Ord 77 r 3(1).

4 Ord 77 r 3(2). Where a defendant gives notice under Ord 77 r 3, the time limited for acknowledging service of the writ does not expire until four days after the defendant has notified the plaintiff in writing that the defendant is satisfied with the statement supplied, or four days after the court has, on the application of the plaintiff by summons served on the defendant not less than seven days before the return day, decided that no further information is reasonably required: Ord 77 r 3(3). As to third party notices see PARA 129 post.

5 See CCR Ord 42 r 4; and **CIVIL PROCEDURE**. As to third party notices see Ord 42 r 11.

## **UPDATE**

### **115-137 Procedure under the Crown Proceedings Act 1947**

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally **CIVIL PROCEDURE**.

RSC Ord 77; CCR Ord 42 revoked: SI 2005/2292. As to proceedings by and against the Crown see now CPR Pt 66.

Halsbury's Laws of England/CROWN PROCEEDINGS AND CROWN PRACTICE (VOLUME 12(1) (REISSUE))/5. PROCEDURE UNDER THE CROWN PROCEEDINGS ACT 1947/(3) PRACTICE AND PROCEDURE/126. Set-off and counterclaim.

## **126. Set-off and counterclaim.**

No counterclaim may be made, or set-off pleaded, without the leave of the court, by the Crown in proceedings against the Crown<sup>1</sup>, or by any person in proceedings by the Crown, if the Crown is sued or sues in the name of a government department and the subject matter of the counterclaim or set-off does not relate to that department<sup>2</sup>, or if the Crown is sued or sues in the name of the Attorney General<sup>3</sup>.

In any proceedings by the Crown a person may not make any counterclaim or plead a set-off if the proceedings are for the recovery of, or the counterclaim or set-off arises out of a right or claim to repayment in respect of, any taxes, duties or penalties<sup>4</sup>.

1 As to civil proceedings by and against the Crown see PARA 116 ante. For the meaning of 'proceedings against the Crown' see PARA 103 note 4 ante; and for the meaning of 'civil proceedings' see PARA 103 note 19 ante (definitions applicable to RSC Ord 77 which was made under the Crown Proceedings Act 1947 s 35(2)).

2 RSC Ord 77 r 6(2)(a).

3 RSC Ord 77 r 6(2)(b). The provisions of Ord 77 r 6(2) are expressed to apply 'notwithstanding Ord 15 r 2, and Ord 18, rr 17 and 18'. Any application for leave in the High Court must be made by summons: Ord 77 r 6(3). In *Atlantic Engine Co (1920) Ltd v Lord Advocate* 1955 SLT 17, the court gave leave to the Crown to avail itself of a set-off and counterclaim the subject of which related to two other departments in addition to the Ministry of Supply. 'The three departments concerned were all contracting with the same company for the supply of the same class of war requirements, and it is difficult to conceive of a situation more favourable for treating the three administrative agencies as one for the purposes of the section': *Atlantic Engine Co (1920) Ltd v Lord Advocate* supra at 21 per the Lord President. Money due to a company from a health authority for work done and materials supplied could be set off against arrears of national insurance contributions due from the company to the then Department of Health and Social Security (as agent of the Crown) on the voluntary liquidation of the company: *RA Cullen Ltd v Nottingham Health Authority* (1986) 2 BCC 99, 368, CA. Note, however, that the status of health authorities has now changed and also that the Department of Health and Social Security was split in 1988 into two separate departments: see **HEALTH SERVICES** vol 54 (2008) PARA 1. As to the status of health authorities generally see *British Medical Association v Greater Glasgow Health Board* [1989] AC 1211 at 1226-1227, [1989] 1 All ER 984 at 990, HL (a health board constituted under the National Health Service (Scotland) Act 1978 s 2 was not for the purposes of the Crown Proceedings Act 1947 s 21 (see PARA 134 post) to be regarded as part of the Crown); Cf *Pfizer Corp v Ministry of Health* [1965] AC 512, [1965] 1 All ER 450, HL (conceded that doctors and nurses in NHS hospitals were to be treated as servants or agents of the Crown).

As to counterclaim and set-off in the county court see **COURTS**.

4 RSC Ord 77 r 6(1). The provisions of Ord 77 r 6(1) are expressed to apply 'notwithstanding Ord 15 r 2, and Ord 18 rr 17 and 18'. For corresponding provisions relating to proceedings in county courts see **COURTS**. As to set-off and counterclaim generally see **CIVIL PROCEDURE** vol 11 (2009) PARA 634 et seq.

## **UPDATE**

### **115-137 Procedure under the Crown Proceedings Act 1947**

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally **CIVIL PROCEDURE**.

RSC Ord 77; CCR Ord 42 revoked: SI 2005/2292. As to proceedings by and against the Crown see now CPR Pt 66.

## **126 Set-off and counterclaim**

TEXT AND NOTES--See CPR 66.4 (added by SI 2005/2292).

Halsbury's Laws of England/CROWN PROCEEDINGS AND CROWN PRACTICE (VOLUME 12(1) (REISSUE))/5. PROCEDURE UNDER THE CROWN PROCEEDINGS ACT 1947/(3) PRACTICE AND PROCEDURE/127. Summary judgment and judgment in default.

## **127. Summary judgment and judgment in default.**

No application may be made for summary judgment<sup>1</sup> in any proceedings against the Crown<sup>2</sup>, nor may an application for summary judgment be made on a counterclaim<sup>3</sup> in any proceedings by the Crown<sup>4</sup>. No application may be made for the determination of any question of law or construction<sup>5</sup> in any proceedings by or against the Crown<sup>6</sup>.

Where an application is made by the Crown for summary judgment<sup>7</sup>, the affidavit required in support of the application must be made by the solicitor acting for the Crown<sup>8</sup> or by an officer duly authorised by the solicitor so acting or by the department concerned<sup>9</sup>. The affidavit should state that, in the deponent's belief, the applicant is entitled to the relief claimed and there is no defence to the claim or part of a claim to which the application relates or no defence except as to the amount of any damages claimed<sup>10</sup>.

Except with the leave of the court<sup>11</sup>, no judgment in default of notice of intention to defend or of pleading may be entered against the Crown in civil proceedings against the Crown<sup>12</sup> or in third party proceedings against the Crown<sup>13</sup>. In the case of third party proceedings against the Crown, the rule<sup>14</sup> relating to the failure of a third party to take a necessary step in the proceedings does not apply except with the leave of the court<sup>15</sup>.

1    Ie under RSC Ord 14 r 1 or Ord 86 r 1. As to summary judgment see **CIVIL PROCEDURE**.

2    RSC Ord 77 r 7(1)(a). For the meaning of 'proceedings against the Crown' see PARA 103 note 4 ante.

3    Ie under RSC Ord 14 r 5.

4    RSC Ord 77 r 7(1)(b).

5    Ie under RSC Ord 14A r 1.

6    RSC Ord 77 r 7(1)(c).

7    Ie under RSC Ord 14 r 1 (claim by Crown), Ord 14 r 5 (counterclaim by Crown), or Ord 86 r 1 (claim by Crown).

8    RSC Ord 77 r 7(2)(a).

9    RSC Ord 77 r 7(2)(b).

10   RSC Ord 77 r 7(2).

11   An application for leave under RSC Ord 77 r 9 may be made by summons or, except in the case of an application relating to Ord 16 r 5 by motion: Ord 77 r 9(3). The summons or notice of motion must be served not less than seven days before the return day: Ord 77 r 9(3).

12   As to civil proceedings against the Crown see PARA 116 ante. For the meaning of 'civil proceedings' see PARA 103 note 19 ante.

13   RSC Ord 77 r 9(1). See also **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 179.

14   If a third party does not give notice of intention to defend or, having been ordered to serve a defence, fails to do so, he is deemed to admit any claim stated in the third party notice and is bound by any judgment (including judgment by consent) or decision in the action in so far as it is relevant to any claim, question or issue stated in that notice: RSC Ord 16 r 5(1)(a). See further **CIVIL PROCEDURE**.

15 RSC Ord 77 r 9(2). As to the mode of application for leave see note 11 supra. As to third party proceedings in the county court see CCR Ord 12 r 2; and **COURTS**.

## **UPDATE**

### **115-137 Procedure under the Crown Proceedings Act 1947**

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally **CIVIL PROCEDURE**.

RSC Ord 77; CCR Ord 42 revoked: SI 2005/2292. As to proceedings by and against the Crown see now CPR Pt 66.

Halsbury's Laws of England/CROWN PROCEEDINGS AND CROWN PRACTICE (VOLUME 12(1) (REISSUE))/5. PROCEDURE UNDER THE CROWN PROCEEDINGS ACT 1947/(3) PRACTICE AND PROCEDURE/128. Revenue cases.

## 128. Revenue cases.

Subject to and in accordance with rules of court, the Crown may<sup>1</sup> apply in a summary manner to the High Court for the payment of:

- 1 (1) inheritance tax<sup>2</sup>;
- 2 (2) duty under enactments relating to excise duties<sup>3</sup>,
- 3 (3) tax under enactments relating to VAT<sup>4</sup>; and
- 4 (4) sums improperly withheld or retained in relation to stamp duties<sup>5</sup>.

The Crown may apply in like manner for:

- 5 (a) the furnishing of information required to be furnished by any person under the enactments relating to inheritance tax<sup>6</sup>, excise duties<sup>7</sup> and VAT<sup>8</sup>; and
- 6 (b) the delivery of certain accounts<sup>9</sup>.

Applications may be made by originating motion or by originating summons<sup>10</sup> and should be supported by affidavit<sup>11</sup>. It is no defence to a claim for the production of books and accounts that production would incriminate the defendant<sup>12</sup>. Unless the court otherwise determines, an order in favour of the Crown on such an application must name a time within which each of its terms is to be complied with<sup>13</sup>. Where the only relief claimed is payment of money, the Crown need not adopt the summary procedure, nor is the Crown prevented from availing itself of any other procedure open to it<sup>14</sup>.

Provision may be made by rules of court for regulating appeals to the High Court, whether by way of case stated or otherwise, under enactments relating to the revenue, and any rules made for the purpose may revoke and replace enactments and rules in force immediately before the commencement of the Crown Proceedings Act 1947 in so far as they regulate any such appeals<sup>15</sup>.

1 The summary procedure under the Crown Proceedings Act 1947 s 14 (as amended) should only be used where a simple question of law is at issue or, where the facts are in dispute, if the issue is not a particularly complicated one: *Re Park, IRC v Park* [1970] 1 All ER 611, [1970] 1 WLR 626; appeal compromised [1970] 2 All ER 248n, [1970] 1 WLR 626 at 635, CA.

2 Crown Proceedings Act 1947 s 14(1)(b) (amended by the the Inheritance Tax Act 1984 s 276, Sch 8 para 2). The Crown Proceedings Act 1947 refers to capital transfer tax, but any such references in the Crown Proceedings Act 1947 (and in any other enactment) now have effect as references to inheritance tax except where the reference relates to a liability arising before 25 July 1986: Finance Act 1986 s 100(1)(b), (2). See further **INHERITANCE TAXATION** vol 24 (Reissue) PARA 401 et seq.

3 Crown Proceedings Act 1947 s 14(2)(a). As to excise duties see **CUSTOMS AND EXCISE**.

4 Ibid s 14(2)(c) (amended by the Finance Act 1972 s 55(1)). As to VAT see **VALUE ADDED TAX**.

5 Crown Proceedings Act 1947 s 14(1)(d). Persons who receive money as or for any duty or fee collected by means of a stamp and improperly withhold or detain it are accountable for the amount of the duty or fee, which is recoverable as a debt to the Crown: see the Stamp Duties Management Act 1891 s 2(1); and **STAMP DUTIES AND STAMP DUTY RESERVE TAX** vol 44(1) (Reissue) PARA 1007.

6 Crown Proceedings Act 1947 s 14(1)(a) (amended by the Finance Act 1975 s 52(1), Sch 12 para 8(a)); and see note 2 supra.

7 Crown Proceedings Act 1947 s 14(2)(b).

8 Ibid s 14(2)(d) (amended by the Finance Act 1975 s 55(7)).

9 Ie (1) the delivery of accounts under the Inheritance Tax Act 1984 (Crown Proceedings Act 1947 s 14(1)(b) (as amended: see note 2 supra); (2) the delivery of an account under the Stamp Duties Management Act 1891 s 2 or under s 2 as amended or applied by any subsequent enactment (Crown Proceedings Act 1947 s 14(1)(c)); (3) the delivery of any accounts required to be delivered by the enactments relating to excise duties or by any regulations relating to such duties (s 14(2)(b)); and (4) the delivery of any accounts, the production of any books required to be delivered or produced under the enactments relating to value added tax (s 14(2)(d) (as amended: see note 8 supra)).

'Accounts' were held to include sales invoices and purchase invoices, but not 'records and documents': see *Customs and Excise Comrs v Ingram* [1948] 1 All ER 927, CA (case considering the old purchase tax). Incriminating answers to proper demands for such information are probably admissible in evidence: see the argument in *Customs and Excise Comrs v Harz* as reported in [1967] 1 AC 760 at 800, HL. As to the duty to keep records for VAT purposes and to furnish information and produce documents to the Commissioners of Customs and Excise see **VALUE ADDED TAX** vol 49(1) (2005 Reissue) PARA 238 et seq.

10 RSC Ord 77 r 8(1), (2). The person from whom any account or information or payment is claimed or by whom any books are required to be produced must be made respondent or defendant to the application: Ord 77 r 8(3). The application must refer to the enactment under which the account or information or payment or the production of books is claimed, and where information is claimed, the application must show, by appropriate questions or otherwise, what information is required: Ord 77 r 8(4)(b). The originating summons or motion must be entitled in the matter or matters out of which the need for the application arises and in the matter of the Crown Proceedings Act 1947: RSC Ord 77 r 8(4)(a).

11 An affidavit by a duly authorised officer of the government department concerned setting out the state of facts on which the application is based and stating that he has reason to think that those facts exist is evidence of those facts: RSC Ord 77 r 8(5). This rule is not ultra vires: *Customs and Excise Comrs v Ingram* [1948] 1 All ER 927 at 930, CA, per Lord Goddard CJ. If evidence is filed disputing any of the facts, further evidence may be filed, and the court may either decide the matter on the affidavits (after any cross-examination that may have been ordered) or may direct that it be decided by oral evidence in court: RSC Ord 77 r 8(5).

12 *Customs and Excise Comrs v Ingram* [1948] 1 All ER 927, CA.

13 RSC Ord 77 r 8(6).

14 RSC Ord 77 r 8(8).

15 Crown Proceedings Act 1947 s 35(3). At the date at which this volume states the law no such rules had been made. Any power to make rules of court or county court rules includes power to make rules for the purpose of giving effect to the provisions of the Crown Proceedings Act 1947, and any such rules may contain provisions to have effect in relation to any proceedings by or against the Crown in substitution for or by way of addition to any of the provisions of the rules applying to proceedings between subjects: s 35(1). As to the matters with respect to which provision may be made by rules of court and county court rules see s 35(2).

## UPDATE

### 115-137 Procedure under the Crown Proceedings Act 1947

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally **CIVIL PROCEDURE**.

RSC Ord 77; CCR Ord 42 revoked: SI 2005/2292. As to proceedings by and against the Crown see now CPR Pt 66.

### 128 Revenue cases

TEXT AND NOTES--An application under the 1947 Act s 14 must be made in the High Court using the CPR Pt 8 procedure (see **CIVIL PROCEDURE** vol 11 (2009) PARA 127 et seq): CPR 66.5(1), (2) (added by SI 2005/2292).

NOTE 15--References to county court rules omitted: 1947 Act s 35(1), (2) (amended by SI 2005/2712).



Halsbury's Laws of England/CROWN PROCEEDINGS AND CROWN PRACTICE (VOLUME 12(1) (REISSUE))/5. PROCEDURE UNDER THE CROWN PROCEEDINGS ACT 1947/(3) PRACTICE AND PROCEDURE/129. Third party notices and interpleader proceedings.

### **129. Third party notices and interpleader proceedings.**

A third party notice<sup>1</sup> for service on the Crown may not be issued without the leave of the court<sup>2</sup>. The application for the grant of such leave must be made by summons and the summons must be served on the plaintiff and the Crown<sup>3</sup>.

No order barring a claim by the Crown for failing to appear on the hearing of an interpleader summons, or for failing or refusing to comply with an order made in the proceedings<sup>4</sup>, may be made against the Crown except on an application by summons served not less than 7 days before the return day<sup>5</sup>.

1 Including a notice issuable by virtue of RSC Ord 16 r 9.

2 RSC Ord 77 r 10(1). Rule 10(1) is expressed to apply 'notwithstanding anything in Ord 16'.

3 RSC Ord 77 r 10(1). Leave to issue such a notice may not be granted unless the court is satisfied that the Crown is in possession of all such information as it reasonably requires as to the circumstances in which it is alleged that the liability of the Crown has arisen and as to the departments and officers of the Crown concerned: Ord 77 r 10(2).

4 See under RSC Ord 17 r 5(3).

5 RSC Ord 77 r 11.

### **UPDATE**

#### **115-137 Procedure under the Crown Proceedings Act 1947**

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally **CIVIL PROCEDURE**.

RSC Ord 77; CCR Ord 42 revoked: SI 2005/2292. As to proceedings by and against the Crown see now CPR Pt 66.

Halsbury's Laws of England/CROWN PROCEEDINGS AND CROWN PRACTICE (VOLUME 12(1) (REISSUE))/5. PROCEDURE UNDER THE CROWN PROCEEDINGS ACT 1947/(3) PRACTICE AND PROCEDURE/130. Discovery and interrogatories.

### 130. Discovery and interrogatories.

Before the Crown Proceedings Act 1947, the Crown was not liable to make discovery or to answer interrogatories<sup>1</sup>. In general, the Crown is now in the same position as a subject as regards discovery and interrogatories<sup>2</sup>. However, in civil proceedings to which the Crown is a party the rules which provide for mutual discovery by parties without an order of the court<sup>3</sup> have no application<sup>4</sup>.

In two respects, the Crown enjoys a privileged position in relation to discovery and interrogatories:

- 7 (1) although, in any proceedings to which the Crown is a party, the Crown may be required by the court to make discovery of documents and produce documents for inspection and to answer interrogatories, this is without prejudice to any rule of law which authorises or requires the withholding of any document or the refusal to answer any question on the ground that the disclosure of the document or the answering of the question would be injurious to the public interest<sup>5</sup>;
- 8 (2) interrogatories without an order of the court, now available to all parties and not just the Crown, may not be served on the Crown<sup>6</sup>.

English informations were a proceeding by which the Crown or the Duke of Cornwall might claim rights to hereditaments, particularly in cases where the title was ancient and obscure, and might obtain an account and payment from defaulting officers or other persons or corporations<sup>7</sup>. English informations were used for the recovery of foreshore<sup>8</sup>, for the recovery of other hereditaments, corporeal and incorporeal<sup>9</sup> and for the recovery of money debts where discovery and an account were desired<sup>10</sup>.

1 *Thomas v R* (1874) LR 10 QB 44; *Tomline v R* (1879) 4 ExD 252, CA.

2 See the Crown Proceedings Act 1947 s 28; and **CIVIL PROCEDURE**.

3 Ie RSC Ord 24 rr 1, 2.

4 See RSC Ord 77 r 12(1).

5 See RSC Ord 77 r 12(2). As to proceedings in the county court see CCR Ord 42 r 12.

6 See RSC Ord 26 r 3(3).

7 See Robertson's Civil Proceedings by and against the Crown 234.

8 *A-G v Constable* (1879) 4 ExD 172; *A-G v Williamson* (1889) 60 LT 930; *A-G v Emerson* [1891] AC 649, HL; *A-G v Newcastle-upon-Tyne Corpn* [1899] 2 QB 478, CA.

9 *A-G v Lord Stawell* (1795) 2 Anst 592; *A-G v Hallett* (1847) 16 M & W 569 (waste in a royal forest); *A-G v Reynolds* [1911] 2 KB 888 (rights of common); *A-G and the Comrs of Woods and Forests v Sitwell* (1835) 1 Y & C Ex 559; *A-G v Lambe* (1838) 3 Y & C Ex 162; *A-G v Reveley* (1869) Karlake's Special Rep; *A-G v Barker* (1872) LR 7 Exch 177 (manorial rights); *A-G v Vincent* (1724) Bunb 192 (copyholds); *A-G v Lord Eardley* (1820) 8 Price 39 (tithes); *A-G to Prince of Wales v Collom* [1916] 2 KB 193 (mining rights in Duchy of Cornwall). See further **CROWN PROPERTY; CUSTOM AND USAGE**.

10 *Great Western Rly Co v A-G* (1866) LR 1 HL 1; *A-G v Metropolitan District Rly Co* (1880) 5 ExD 218, CA (railway passenger duty); *A-G v Duke of Richmond (No 2)* [1907] 2 KB 940 (death and other duties); *A-G v Goddard* (1929) 98 LJB 743 (recovery of bribes received by police officer); *A-G v Evans* (1862) 5 LT 760 (fee farm rents).

## **UPDATE**

### **115-137 Procedure under the Crown Proceedings Act 1947**

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally **CIVIL PROCEDURE**.

RSC Ord 77; CCR Ord 42 revoked: SI 2005/2292. As to proceedings by and against the Crown see now CPR Pt 66.

Halsbury's Laws of England/CROWN PROCEEDINGS AND CROWN PRACTICE (VOLUME 12(1) (REISSUE))/5. PROCEDURE UNDER THE CROWN PROCEEDINGS ACT 1947/(3) PRACTICE AND PROCEDURE/131. Mode and venue of trial.

### **131. Mode and venue of trial.**

The Crown has the right<sup>1</sup> to demand trial at bar<sup>2</sup> of any civil proceedings in which the Crown is interested<sup>3</sup>. If the Attorney General waives his right to a trial at bar, the Crown may demand a local venue for the trial of the proceedings<sup>4</sup>.

Civil proceedings by or against the Crown<sup>5</sup> in the High Court must be tried at the Royal Courts of Justice, unless the court with the Crown's consent otherwise directs<sup>6</sup>. However, where the Crown refuses its consent the court may take account of the refusal in exercising its powers in regard to the award of costs<sup>7</sup>.

1 See *Bac Abr*, Prerogative (E) 7; *R v Johnson* (1725) 1 Stra 644; *R v Hales* (1728) 2 Stra 816; *Rowe v Brenton* (1828) 8 B & C 737; *Dixon v Farrer* (1886) 18 QBD 43, CA; *Lord Stanley of Alderley v Wild & Son* [1900] 1 QB 256, CA. The right of the Crown to demand trial at bar or to control or otherwise intervene in proceedings affecting its rights, property or profits is preserved by the Crown Proceedings Act 1947 s 40(2)(g): see PARA 103 ante. The Crown's rights include the right to remove into the High Court proceedings between subjects in a county court in which the rights of the Crown may come into question, and to procure a stay of those proceedings pending the determination of any action between the Crown and one of the parties: *A-G v Constable* (1879) 4 ExD 172; *Lord Stanley of Alderley v Wild & Son* supra; *Ulmann v Cowes Harbour Comrs* [1909] 2 KB 1. As to the transfer of proceedings see PARA 132 post.

2 Since 1875, this would appear to mean trial before a Divisional Court: *Anderson v Gorrie* (1894) 10 TLR 383, CA; *Dixon v Farrer* (1886) 18 QBD 43, CA.

3 The right to demand trial at bar appears to have fallen into disuse: see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 535.

4 See the Crown Proceedings Act 1947 s 19(3); and RSC Ord 77 r 13(2).

5 For the meaning of 'civil proceedings' see PARA 103 note 19 ante. As to civil proceedings by and against the Crown see PARA 116 ante.

6 Crown Proceedings Act 1947 s 19(2); RSC Ord 77 r 13(1).

7 Crown Proceedings Act 1947 s 19(2).

## **UPDATE**

### **115-137 Procedure under the Crown Proceedings Act 1947**

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally **CIVIL PROCEDURE**.

RSC Ord 77; CCR Ord 42 revoked: SI 2005/2292. As to proceedings by and against the Crown see now CPR Pt 66.

### **131 Mode and venue of trial**

TEXT AND NOTES 4-7--1947 Act s 19 repealed: SI 2005/2712.

Halsbury's Laws of England/CROWN PROCEEDINGS AND CROWN PRACTICE (VOLUME 12(1) (REISSUE))/5. PROCEDURE UNDER THE CROWN PROCEEDINGS ACT 1947/(3) PRACTICE AND PROCEDURE/132. Transfer of proceedings.

### **132. Transfer of proceedings.**

In any civil proceedings against the Crown<sup>1</sup> begun by the issue of a writ out of a district registry the Crown may acknowledge service of the writ either in the district registry or at the option of the Crown, in the appropriate office of the Supreme Court at the Royal Courts of Justice<sup>2</sup> and where service is acknowledged in an office of the Supreme Court at the Royal Courts of Justice the action must thereafter proceed in the Royal Courts of Justice and no order<sup>3</sup> may be made for the transfer of any proceedings before the trial from the Royal Courts of Justice to a district registry<sup>4</sup>. In any other civil proceedings by or against the Crown no order<sup>5</sup> may be made for the transfer of the proceedings<sup>6</sup> from the Royal Courts of Justice to a district registry, except with the consent of the Crown<sup>7</sup>.

If in a case where proceedings are instituted against the Crown in a county court an application is made in that behalf by the Crown to the High Court, and there is produced to the court a certificate of the Attorney General to the effect that the proceedings may involve an important question of law, or may be decisive of other cases arising out of the same matter, or are for other reasons more fit to be tried in the High Court, the proceedings must be removed into the High Court<sup>8</sup>. All rules of law and enactments relating to the removal or transfer of proceedings from a county court to the High Court, or the transfer of proceedings from the High Court to a county court, apply in relation to proceedings against the Crown<sup>9</sup>.

1 For the meaning of 'civil proceedings' see PARA 103 note 19 ante. As to civil proceedings against the Crown see PARA 116 ante.

2 RSC Ord 77 r 2(2). As to entry of appearance by the Crown in the central office see PARA 123 ante.

3 Ie under RSC Ord 4 r 5.

4 RSC Ord 77 r 2(2).

5 Ie under RSC Ord 4 r 5.

6 Ie or the transfer of any summons or other application in the proceedings: RSC Ord 77 r 2(1).

7 RSC Ord 77 r 2(1).

8 Crown Proceedings Act 1947 s 20(1). See also PARA 131 note 1 ante; and **COURTS**. Where any proceedings have been removed into the High Court on the production of such a certificate, and it appears to the court by whom the proceedings are tried that the removal has occasioned additional expense to the person by whom the proceedings are brought, the court may take account of the additional expense so occasioned in exercising its powers in regard to the award of costs: see s 20(1).

9 See *ibid* s 20(2) (amended by the Supreme Court Act 1981 ss 152(4), 153(4), (5), Sch 7). Transitional provision was made by the High Court and County Courts Jurisdiction Order 1991, SI 1991/724, art 11.

## **UPDATE**

### **115-137 Procedure under the Crown Proceedings Act 1947**

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally **CIVIL PROCEDURE**.

RSC Ord 77; CCR Ord 42 revoked: SI 2005/2292. As to proceedings by and against the Crown see now CPR Pt 66.

### **132 Transfer of proceedings**

TEXT AND NOTES--In the case of civil proceedings by or against the Crown, the location of the relevant government department or officers of the Crown and, where appropriate, any relevant public interest that the matter should be tried in London: CPR 30.3(2)(h) (added by SI 2005/2292).

TEXT AND NOTE 8--Repealed: SI 2005/2712.

TEXT AND NOTE 9--Crown Proceedings Act 1947 s 20(2) amended: SI 2005/2712.  
Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force 1 October 2009: SI 2009/1604).

Halsbury's Laws of England/CROWN PROCEEDINGS AND CROWN PRACTICE (VOLUME 12(1) (REISSUE))/5. PROCEDURE UNDER THE CROWN PROCEEDINGS ACT 1947/(3) PRACTICE AND PROCEDURE/133. Evidence.

### **133. Evidence.**

All powers exercisable by the court in regard to the taking of evidence are exercisable in proceedings by or against the Crown<sup>1</sup> as they are exercisable in proceedings between subjects<sup>2</sup>.

1 For the meaning of 'proceedings against the Crown' see PARA 103 note 4 ante. As to civil proceedings by and against the Crown see PARA 116 ante.

2 See RSC Ord 77 r 14(2). The Crown Proceedings Act 1947 does not affect any rules of evidence: see PARA 106 ante. It has been said that the monarch may not give evidence in her own cause: see **CROWN AND ROYAL FAMILY** vol 12(1) (Reissue) PARA 55.

### **UPDATE**

#### **115-137 Procedure under the Crown Proceedings Act 1947**

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally **CIVIL PROCEDURE**.

RSC Ord 77; CCR Ord 42 revoked: SI 2005/2292. As to proceedings by and against the Crown see now CPR Pt 66.

Halsbury's Laws of England/CROWN PROCEEDINGS AND CROWN PRACTICE (VOLUME 12(1) (REISSUE))/5. PROCEDURE UNDER THE CROWN PROCEEDINGS ACT 1947/(3) PRACTICE AND PROCEDURE/134. Relief.

### 134. Relief.

Subject to two exceptions, in any civil proceedings by or against the Crown<sup>1</sup> the court may make any such order<sup>2</sup> against the Crown as it may make in proceedings between subjects<sup>3</sup>. The exceptions are:

- 9 (1) an injunction<sup>4</sup> or order for specific performance<sup>5</sup> may not be granted against the Crown, but the court may instead make an order<sup>6</sup> declaratory of the rights of the parties<sup>7</sup>. Similarly, the court may not grant any injunction or make any order against an officer of the Crown<sup>8</sup> if the effect of granting the injunction or making the order would be to give any relief against the Crown which could not have been obtained in proceedings against the Crown<sup>9</sup>;
- 10 (2) an order for the recovery of land or the delivery of property may not be made against the Crown, but the court may instead make an order declaring the plaintiff to be entitled as against the Crown to the land or property or to the possession of it<sup>10</sup>.

However, injunctive relief (whether interim or final) is now available in judicial review proceedings against a minister of the Crown<sup>11</sup>. Furthermore, a decision made by a minister or other officer of the Crown may be stayed by court order, pending the final determination of the validity of the decision in proceedings for judicial review<sup>12</sup>. Ministers of the Crown may also be liable for contempt of court<sup>13</sup>.

Since the enactment of the Crown Proceedings Act 1947, the former rule or practice<sup>14</sup> by which the Crown was not required to give an undertaking in damages as a condition of being granted an interim injunction is no longer justifiable<sup>15</sup>. In a case, however, where the Crown seeks by injunction to enforce what is *prima facie* the law of the land, as opposed to its proprietary rights, the person against whom the Crown seeks the injunction is required to show special reason or special circumstances why the Crown should be required to give the undertaking as a condition of being granted the injunction<sup>16</sup>.

1 As to civil proceedings by and against the Crown see PARA 116 ante. For the meaning of 'proceedings against the Crown' see PARA 103 note 4 ante; and for the meaning of 'civil proceedings' see PARA 103 note 19 ante.

2 'Order' includes a judgment, decree, rule, award or declaration: Crown Proceedings Act 1947 s 38(2).

3 Ibid s 21(1). The Act does not limit the discretion of the court to grant relief by way of mandamus in cases in which such relief might have been granted before 1 January 1948, notwithstanding that by reason of the Act some other and further remedy is available: s 40(5). As to mandamus see **JUDICIAL REVIEW** vol 61 (2010) PARA 703 et seq.

4 As to injunctions see generally **CIVIL PROCEDURE** vol 11 (2009) PARA 331 et seq.

5 As to specific performance see generally **SPECIFIC PERFORMANCE**.

6 It has been held that the reference in the Crown Proceedings Act 1947 s 21(1) to a declaratory order relates only to a final declaration and has no application where interlocutory relief is sought; and therefore that the court has no jurisdiction to make an interim declaration: *Underhill v Ministry of Food* [1950] 1 All ER 591; *International General Electric Co of New York Ltd v Customs and Excise Comrs* [1962] Ch 784, [1962] 2 All ER 398, CA; applied in *R v IRC, ex p Rossminster Ltd* [1980] AC 952, [1979] 3 All ER 385, CA; revsd on another



point [1980] AC 952, [1980] 1 All ER 80, HL); see also *Griffin v Lord Advocate* 1950 SC 448. However, this question was left open in *Re M* [1994] 1 AC 377, sub nom *M v Home Office* [1993] 3 All ER 537, HL.

7 Crown Proceedings Act 1947 s 21(1) proviso (a).

8 For the meaning of 'officer' see PARA 108 note 2 ante.

9 Crown Proceedings Act 1947 s 21(2). However, this prohibition in relation to officers of the Crown only applies to those cases where, prior to the Act, no such relief would have been available: *Re M* [1994] 1 AC 377 at 412-413, sub nom *M v Home Office* [1993] 3 All ER 537 at 555-556, HL, per Lord Woolf.

In a case concerning European Community law in which an application is made for interim relief, and a national court considers that the only obstacle which precludes it from giving that relief is a rule of national law, the national court must set aside that rule and can then grant interim relief to protect a person's interests under European Community law, including granting injunctions against an officer of the Crown: Case C-213/89 *R v Secretary of State for Transport ex p Factortame Ltd (No 2)* [1991] 1 AC 603, sub nom *Factortame Ltd v Secretary of State for Transport (No 2)* [1991] 1 All ER 70, ECJ and HL.

10 Crown Proceedings Act 1947 s 21(1) proviso (b). References in the Rules of the Supreme Court to an action or claim for the possession of land are to be construed as including references to proceedings against the Crown for an order declaring that the plaintiff is entitled as against the Crown to the land or to the possession of it: RSC Ord 1 r 6.

11 See the Supreme Court Act 1981 s 31; and *Re M* [1994] 1 AC 377 at 420-422, sub nom *M v Home Office* [1993] 3 All ER 537 at 562-564, HL, per Lord Woolf. Although not expressly stated in that case, this will presumably only relate to ministers acting pursuant to a power or duty expressly conferred on them in their own name: see further Wade and Forsyth on Administrative Law (7th Edn) pp 585-586. See also Case C-213/89 *R v Secretary of State for Transport, ex p Factortame Ltd (No 2)* [1991] 1 AC 603, sub nom *Factortame Ltd v Secretary of State for Transport (No 2)* [1991] 1 All ER 70, ECJ and HL.

12 *R v Secretary of State for Education and Science, ex p Avon County Council* [1991] 1 QB 558, [1991] 1 All ER 282, CA (court had jurisdiction to grant a stay of decision by education minister regarding reorganisation of education in the county, although such a stay was unnecessary in that case); and see *Re M* [1994] 1 AC 377 at 422, sub nom *M v Home Office* [1993] 3 All ER 537 at 564, HL. However, a 'stay' has been defined restrictively as an order that stops the further conduct of proceedings in court or before a tribunal, and thus not enforceable by proceedings for contempt: *Minister of Foreign Affairs, Trade and Industry v Vehicles and Supplies Ltd* [1991] 4 All ER 65 at 71, [1991] 1 WLR 550 at 556, PC.

13 See *Re M* [1994] 1 AC 377, sub nom *M v Home Office* [1993] 3 All ER 537, HL.

14 See *A-G v Albany Hotel Co* [1896] 2 Ch 696, CA; *Secretary of State for War v Cope* [1919] 2 Ch 339.

15 *F Hoffmann-La Roche & Co AG v Secretary of State for Trade and Industry* [1975] AC 295 at 329, [1974] 2 All ER 1128, HL, at 341 and at 1133-1134 per Lord Reid, at 351 and at 1142 per Lord Morris of Borth-y-Gest, at 362 and 1151 per Lord Diplock, and at 371 and 1158 per Lord Cross; followed in *Re Highfield Commodities Ltd* [1984] 3 All ER 884, [1985] 1 WLR 149.

16 *F Hoffmann-La Roche & Co AG v Secretary of State for Trade and Industry* [1975] AC 295 at 329 at 341, [1974] 2 All ER 1128 at 1133-1134, HL, per Lord Reid, and at 351 and 1142-1143 per Lord Morris of Borth-y-Gest, at 364 and 1152-1153 per Lord Diplock, and at 371 and 1158-1159 per Lord Cross; followed in *Re Highfield Commodities Ltd* [1984] 3 All ER 884, [1985] 1 WLR 149; and in *Director General of Fair Trading v Tobyward Ltd* [1989] 2 All ER 266, [1989] 1 WLR 517. In determining whether there is such good reason all the circumstances are to be taken into account: see *F Hoffmann-La Roche Co AG v Secretary of State for Trade and Industry* supra at 352 and at 1143 per Lord Morris of Borth-y-Gest.

## UPDATE

### 115-137 Procedure under the Crown Proceedings Act 1947

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally **CIVIL PROCEDURE**.

RSC Ord 77; CCR Ord 42 revoked: SI 2005/2292. As to proceedings by and against the Crown see now CPR Pt 66.

### 134 Relief

NOTES 1-3--A third party debt order under CPR Pt 72, an order for the appointment of a receiver under CPR Pt 69 and an order for the appointment of a sequestrator under RSC Ord 45 may not be made and have no effect in respect of any money due from the Crown: CPR 66.7(1), (2) (added by SI 2005/2292).

NOTE 2--See *R (on the application of Rusbridger) v A-G* [2003] UKHL 38, [2003] 3 All ER 784 (court refused to make declaration as to lawfulness of conduct where such a declaration would serve no practical purpose).

NOTE 3--Judicial review proceedings against the Crown in Scotland were not 'civil proceedings' within the meaning of the 1947 Act s 21(1): *Davidson v Scottish Ministers* [2005] UKHL 74, 2006 SLT 110. See also *Beggs v The Scottish Ministers* [2007] UKHL 3, [2007] 1 WLR 455.

NOTE 11--1981 Act s 31 amended:SI 2004/1033.

Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force 1 October 2009: SI 2009/1604).

Halsbury's Laws of England/CROWN PROCEEDINGS AND CROWN PRACTICE (VOLUME 12(1) (REISSUE))/5. PROCEDURE UNDER THE CROWN PROCEEDINGS ACT 1947/(3) PRACTICE AND PROCEDURE/135. Judgment and execution.

### 135. Judgment and execution.

With certain exceptions<sup>1</sup>, orders<sup>2</sup> made in favour of the Crown against any person in any civil proceedings to which the Crown is a party<sup>3</sup> may be enforced in the same manner as orders in actions between subjects and in no other way<sup>4</sup>. Crown debtors enjoy the same protection from imprisonment under the Debtors Act 1869 as any other debtors<sup>5</sup>, except in respect of non-payment of inheritance tax<sup>6</sup>. The power of the court to order the arrest of a judgment debtor about to quit England<sup>7</sup> applies with any necessary modifications to civil proceedings by the Crown in the High Court<sup>8</sup>.

The Crown is immune from all ordinary modes of enforcing a judgment, and nothing in the rules of court relating to enforcement<sup>9</sup> applies in respect of any order against the Crown<sup>10</sup>. Satisfaction of an order (including an order for costs) made against the Crown in any civil proceedings may be obtained by means of a certificate containing particulars of the order issued by the court and served on the person who is acting as solicitor for the Crown<sup>11</sup>.

No order for the attachment of debts<sup>12</sup> or for the appointment of a sequestrator<sup>13</sup> or receiver<sup>14</sup> may be made in respect of any money due or accruing due from the Crown<sup>15</sup>. However, except in certain cases, orders analogous to garnishee orders or to orders for the appointment of a sequestrator or receiver may be made in respect of money due or accruing due from the Crown to a judgment debtor<sup>16</sup>.

In general, the Crown is in the same position as a subject as regards interest on debts and damages<sup>17</sup>, and on judgment debts and costs<sup>18</sup>.

1 The Crown Proceedings Act 1947 s 26(1) is subject to the provisions of the Act: see s 26(1). When reference is made in the Act to its provisions, unless the context otherwise requires, the reference includes a reference to rules of court or county court rules made for the purpose of the Act: s 38(1). As to exceptions to s 26(1) see s 26(3); and **CIVIL PROCEDURE** vol 12 (2009) PARA 1239.

2 For the meaning of 'order' see PARA 134 note 2 ante.

3 Any reference in the Crown Proceedings Act 1947 Pt III (ss 24-27) (as amended) or Pt IV (ss 28-40) (as amended) to civil proceedings by or against the Crown, or to civil proceedings to which the Crown is a party, is to be construed as including a reference to civil proceedings to which the Attorney General or any government department, or any officer of the Crown as such is a party: s 38(4). However, the Crown is not for the purposes of Pts III and IV (both as amended) deemed to be a party to any proceedings by reason only that they are brought by the Attorney General upon the relation of some other person: s 38(4) proviso. In RSC Ord 77, 'civil proceedings to which the Crown is a party' has the same meaning: Ord 77 r 1(2). For the meaning of 'civil proceedings' see PARA 103 note 19 ante. As to civil proceedings by and against the Crown see PARA 116 ante.

4 See the Crown Proceedings Act 1947 s 26(1); and **CIVIL PROCEDURE** vol 12 (2009) PARA 1239.

5 As to imprisonment for debt see **CONTEMPT OF COURT** vol 9(1) (Reissue) PARA 484 et seq.

6 See the Crown Proceedings Act 1947 s 26(2) (as amended); and **CIVIL PROCEDURE** vol 12 (2009) PARA 1239; **CONTEMPT OF COURT** vol 9(1) (Reissue) PARA 485. Section 26(2) (as amended) refers to death duties, a term which is now to be construed as a reference to inheritance tax: see the Finance Act 1975 s 52(1), Sch 12 para 1; the Finance Act 1986 s 100(1)(b), (2); and PARA 128 note 2 ante. See further **INHERITANCE TAXATION** vol 24 (Reissue) PARA 401 et seq.

7 Ie under the Debtors Act 1869 s 6 (as amended).

8 See the Crown Proceedings Act 1947 s 31(2); and PARA 106 note 3 ante.

9 le RSC Ords 45-52: see **CIVIL PROCEDURE**.

10 See the Crown Proceedings Act 1947 s 25(4); RSC Ord 77 r 15(1); and **CIVIL PROCEDURE** vol 12 (2009) PARA 1239.

A judgment in favour of the suppliant of a petition of right under the Colonial Stock Act 1877 s 20 (as amended) is an order against the Crown within the meaning of RSC Ord 77 r 15(1) and the procedure under Ord 48 for the examination of the 'judgment debtor' therefore does not apply to such a judgment: *Franklin v R (No 2)* [1974] QB 202 at 205, [1973] 3 All ER 861 at 866, CA.

11 See the Crown Proceedings Act 1947 s 25(1)-(3); RSC Ord 77 r 15; and **CIVIL PROCEDURE** vol 12 (2009) PARA 1239. As to orders made against the Crown in the county court see **COURTS**.

12 le under RSC Ord 49.

13 le under RSC Ord 45.

14 le under RSC Ord 30 or Ord 51.

15 See RSC Ord 77 r 16(1). As to corresponding provisions relating to county court proceedings see **COURTS**.

16 See the Crown Proceedings Act 1947 s 27 (as amended); RSC Ord 77 r 16(1A), (2), (3). As to corresponding provisions relating to county court proceedings see **COURTS**.

17 See the Law Reform (Miscellaneous Provisions) Act 1934 s 3 (as amended); the Supreme Court Act 1981 s 35A (as added); and the County Courts Act 1984 s 69 (as amended).

18 See the Crown Proceedings Act 1947 s 24(1) (amended by the Private International Law (Miscellaneous Provisions) Act 1995 s 4(1)) (see **CIVIL PROCEDURE**); the Crown Proceedings Act 1947 s 24(2) (see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 392); and the Crown Proceedings Act 1947 s 24(3) (amended by the Administration of Justice Act 1982 s 15(3), Sch 1 Pt III; and the County Courts Act 1984 s 148(1), Sch 2 para 21). As to interest on damages see **DAMAGES** vol 12(2) (Reissue) PARAS 848-850 post. As to the award of interest in proceedings in the county court see **COURTS**.

## UPDATE

### 115-137 Procedure under the Crown Proceedings Act 1947

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally **CIVIL PROCEDURE**.

RSC Ord 77; CCR Ord 42 revoked: SI 2005/2292. As to proceedings by and against the Crown see now CPR Pt 66.

### 135 Judgment and execution

TEXT AND NOTES--CPR Pts 69-73, RSC Ords 45-47, 52 and CCR Ords 25-29 do not apply to any order against the Crown: CPR 66.6(1), (2) (added by SI 2005/2292).

NOTE 1--Words 'or county court rules' omitted: 1947 Act s 38(1) (amended by SI 2005/2712).

NOTE 10--1877 Act repealed: Statute Law (Repeals) Act 1998.

TEXT AND NOTE 11--An application for a separate certificate of costs payable to the applicant under the 1947 Act s 25(1) may be made without notice: CPR 66.6(3) (added by SI 2005/2292).

TEXT AND NOTE 16--1947 Act s 27 amended: SI 2005/2712.

An application for an order under the 1947 Act s 27 restraining a person from receiving money payable to him by the Crown and directing payment of the money to the applicant or another person may be made under CPR Pt 23: CPR 66.7(3) (CPR 66.7 added by SI 2005/2292). See also CPR 66.7(4)-(7).

NOTE 17--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force 1 October 2009: SI 2009/1604).

Halsbury's Laws of England/CROWN PROCEEDINGS AND CROWN PRACTICE (VOLUME 12(1) (REISSUE))/5. PROCEDURE UNDER THE CROWN PROCEEDINGS ACT 1947/(3) PRACTICE AND PROCEDURE/136. Costs.

### 136. Costs.

In civil proceedings<sup>1</sup>, including arbitrations, to which the Crown<sup>2</sup> is a party, the costs of and incidental to the proceedings are in the discretion of the court or arbitrator which is to be exercised in the same manner and on the same principles as in cases between subjects, and the court or arbitrator has power to make an order for the payment of costs by or to the Crown accordingly<sup>3</sup>. In the case, however, of proceedings to which, by reason of any enactment or otherwise, the Attorney General, government department or any officer of the Crown as such is required to be a party, the court or arbitrator must have regard to the nature of the proceedings, and the character and circumstances in which the Attorney General, the department or officer of the Crown appears, and may in the exercise of its or his discretion order any other party to pay the costs of the Attorney General, department or officer, whatever the result of the proceedings<sup>4</sup>.

1 'Civil proceedings' in this context includes proceedings by petition of right and proceedings by the Crown in the High Court or a county court for the recovery of fines or penalties, and 'proceedings to which the Crown is a party' includes proceedings to which the Attorney General or any government department or any officer of the Crown as such is a party, but the Crown is not deemed to be a party to any proceedings by reason only that the proceedings are proceedings by the Attorney General on the relation of some other person: Administration of Justice (Miscellaneous Provisions) Act 1933 ss 7(2), 10(1). As to relator actions see **CHARITIES** vol 8 (2010) PARA 607 et seq; **CIVIL PROCEDURE**.

2 Proceedings affecting Her Majesty in her private capacity are not within the scope of the Administration of Justice (Miscellaneous Provisions) Act 1933: see s 9. The Administration of Justice (Miscellaneous Provisions) Act 1933 does not extend to Scotland or Northern Ireland: s 10(2). The common law immunity of the Crown from liability for costs survives only in the case of proceedings affecting Her Majesty in her private capacity: see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 392.

3 Ibid s 7(1). See *Re Southbourne Sheet Metal Co Ltd* [1993] 1 WLR 244, [1992] BCC 797, CA (no special treatment for Secretary of State even when proceedings were brought in the public interest). As to costs in the High Court see RSC Ord 62; and **CIVIL PROCEDURE**. As to costs in the county court see **CIVIL PROCEDURE** vol 12 (2009) PARA 1729 et seq; **COURTS**. As to interest on costs and the enforcement of orders for costs against the Crown see PARA 135 ante. Nothing in the Administration of Justice (Miscellaneous Provisions) Act 1933 s 7(1) affects the power of the court or arbitrator to order, or any enactment providing for, the payment of costs out of any particular fund or property, or any enactment expressly relieving any department or officer of the Crown of the liability to pay costs: s 7(1) proviso (b).

4 Ibid s 7(1) proviso (a).

### UPDATE

#### 115-137 Procedure under the Crown Proceedings Act 1947

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally **CIVIL PROCEDURE**.

RSC Ord 77; CCR Ord 42 revoked: SI 2005/2292. As to proceedings by and against the Crown see now CPR Pt 66.

Halsbury's Laws of England/CROWN PROCEEDINGS AND CROWN PRACTICE (VOLUME 12(1) (REISSUE))/5. PROCEDURE UNDER THE CROWN PROCEEDINGS ACT 1947/(3) PRACTICE AND PROCEDURE/137. Appeals and stay of execution.

### **137. Appeals and stay of execution.**

All enactments, rules of court and county court rules relating to appeals and stay of execution apply, with any necessary modifications, to civil proceedings by or against the Crown<sup>1</sup> as they apply to proceedings between subjects<sup>2</sup>.

1 For the meaning of 'civil proceedings' see PARA 103 note 19 ante. As to civil proceedings by and against the Crown see PARA 116 ante.

2 Crown Proceedings Act 1947 s 22. This is, however, subject to relevant provisions of the 1947 Act including rules of court or county court rules made under it: see ss 22, 38(1).

### **UPDATE**

#### **115-137 Procedure under the Crown Proceedings Act 1947**

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally **CIVIL PROCEDURE**.

RSC Ord 77; CCR Ord 42 revoked: SI 2005/2292. As to proceedings by and against the Crown see now CPR Pt 66.

#### **137 Appeals and stay of execution**

NOTE 2--Words 'or county court rules' omitted: 1947 Act ss 22, 38(1) (amended by SI 2005/2712).